

1 Q In your -- when you were working there, did
2 you have, I guess, any power or any involvement in how
3 patients were billed?

4 A None whatsoever, except for I submitted my own
5 personal fees. But outside of that, no.

6 Q Okay. Did you review anyone's billing
7 statements or anything like that?

8 A No, I did not.

9 Q To your knowledge, who was -- who was in
10 charge of billing?

11 A Dr. Desai.

12 Q And did he -- did he have an administrative
13 assistant or someone who handled the submissions?

14 A Tonya Rushing processed those billings that
15 were submitted to her.

16 Q Okay. Did you --

17 A She had multiple assists that aided her in
18 that endeavor.

19 Q Okay. So, I mean, Tonya Rushing probably
20 isn't doing the data input directly?

21 A No, she oversaw the billing department.

22 Q Okay.

23 A But there were multiple secretaries.

24 Q Did you have any involvement in that?

25 A No.

1 Q Would you have reviewed any -- any anesthesia
2 billing or anything like that while you were working there?

3 A No.

4 Q While you were employed there had you ever
5 heard of something called a CRNA fund?

6 A Yes.

7 Q When did you first hear about that fund?

8 A Surreptitiously. My office door was not
9 terribly far from Dr. Desai's office door, and at times I
10 would hear him ask Charlene, who was a bookkeeper, how much
11 money was in the CRNA fund. And --

12 Q I'm sorry, but do you remember when this was
13 that you first heard about it?

14 A I don't remember the exact date. May 2006 or
15 so, 2007.

16 Q Okay. And so you would hear him ask Charlene
17 about how much money was in the fund?

18 A And then he would ask her to do transfers and
19 I -- my understanding, or my impression I should say more
20 correctly, was that that was so that he could do distributions
21 to physician partners, to pay bills for the practice,
22 etcetera.

23 Q And when you -- when you first heard him
24 talking about it, did you ever address it with him asking him,
25 well, what is the CRNA fund?

1 A No, I did not.

2 Q Did you -- when you heard about it, did you
3 know what it was?

4 A No, I didn't, but I thought it was unusual
5 that there would be a separate fund.

6 Q And did you ever -- did you ever get a
7 distribution from it?

8 A On one occasion.

9 Q And how long after the -- you know, you first
10 start hearing about it did you get a distribution from it?

11 A A year, year and a half.

12 Q Who gave you the distribution?

13 A Dr. Desai did.

14 Q And how did you get it? What form did it come
15 in?

16 A In a check.

17 Q Do you remember how much the check was for?

18 A \$25,000.

19 Q When he gave it to you, when he gave you the
20 check, what did he say?

21 A He told me I had been working a lot of hours
22 and that he wanted me to have that in terms of compensation
23 for the effort, and he suggested that I put it in a bank
24 account separate from the -- the accounts kept by my family
25 because he thought I might be having marital problems at the

1 time.

2 Q Okay. So he suggested how you, I guess, would
3 hold the money or use the money?

4 A Uh-huh.

5 Q Is that yes --

6 A Yes.

7 Q -- for the record?

8 A Not anything specific other than a general
9 recommendation.

10 Q Okay. When you got -- when you got that
11 check, did you ask him any more about the fund?

12 A I held it for awhile because it was drawn
13 on --

14 MR. WRIGHT: Pardon? I didn't hear that.

15 THE WITNESS: I held the check for awhile before
16 depositing it because it was drawn on Wells Fargo Bank, and
17 that bank was different from -- from the bank that
18 Gastroenterology and Endoscopy Center used, and that would
19 have been Bank of George or Nevada First at various times.
20 And eventually I asked my accountant about it, and he said,
21 well, just deposit it and we'll report it --

22 BY MS. WECKERLY:

23 Q Okay.

24 A -- on your tax return. That's all.

25 Q Did -- did you ever come to understand how

1 that account was funded?

2 A I don't know specifics. I can only assume it
3 was funded by fees for services provided by the CRNAs.

4 Q Did you ever as a partner or physician, did
5 you ever get a statement or any kind of accounting for that
6 CRNA fund?

7 A No, I did not.

8 Q Did you ever ask for one?

9 A It was asked for indirectly by the transition
10 group through Dr. Albert Mason.

11 MR. WRIGHT: Objection. Foundation.

12 MS. WECKERLY: Okay.

13 THE COURT: All right. Yeah.

14 BY MS. WECKERLY:

15 Q When the transition group -- that was created
16 after the CDC came in, is that fair?

17 A Yes.

18 Q And were you involved in that transition
19 group?

20 A I was a member.

21 Q And that group -- well, did that group request
22 an accounting of this fund?

23 MR. WRIGHT: Objection. This is a hearsay question.

24 THE COURT: All right. Lay a better foundation.

25 MS. WECKERLY: Okay.

1 BY MS. WECKERLY:

2 Q Did you ever have -- during that time period
3 with the transition group, did you ever request from Dr. Desai
4 personally an accounting of that fund?

5 A Personally, I did not.

6 Q Okay.

7 THE COURT: Were you ever present when anybody else
8 did that?

9 THE WITNESS: I was informed by Dr. Mason that he --

10 MR. WRIGHT: Objection.

11 THE WITNESS: -- had requested that.

12 THE COURT: I was about to say don't get into
13 anything that anybody informed you of.

14 THE WITNESS: Oh, okay.

15 THE COURT: Other than if it was Dr. Desai himself
16 who may have said something.

17 BY MS. WECKERLY:

18 Q Okay. But regarding that account and that
19 transition group, to your -- that you were a part of.

20 A Uh-huh.

21 Q To your knowledge, did that group -- did you
22 ever see any --

23 MR. WRIGHT: Objection. Can we approach the bench?

24 THE COURT: Well, the question is did you ever see
25 any accounting of the CRNA fund.

1 MS. WECKERLY: Right.

2 BY MS. WECKERLY:

3 Q Have you ever seen one?

4 A Yes.

5 Q And when did you see it?

6 A In 2008.

7 Q How long after the request --

8 MR. WRIGHT: Can we approach the bench, please.

9 THE COURT: Yeah.

10 (Off-record bench conference.)

11 BY MS. WECKERLY:

12 Q Dr. Carrera, you -- you mentioned that you
13 were part of this transition group of, I assume it was doctors
14 that formed after the CDC came in and the Health Department
15 issued their report?

16 A Yes, that is correct.

17 Q And was this like the spring of 2008?

18 A Yes.

19 Q Who was part of the transition group?

20 A Dr. Mason, Dr. Herrero, Dr. Carrol, Dr.
21 Sharma, I believe Dr. Wahid and Mukherjee.

22 Q And --

23 MR. WRIGHT: Say the last --

24 THE WITNESS: That's to the best --

25 MR. WRIGHT: -- one again?

1 THE WITNESS: -- of my recollection.

2 THE COURT: You said Wahid and what was the last --

3 THE WITNESS: Mukherjee.

4 THE COURT: Mukherjee?

5 THE WITNESS: M-U-K-H-E-R-J-E-E.

6 THE COURT: Now, was that doctor a partner, or was
7 he an employee?

8 THE WITNESS: Physician partner.

9 THE COURT: Physician partner. Okay.

10 Go on, Ms. Weckerly.

11 BY MS. WECKERLY:

12 Q And did that group meet in person during that
13 -- during the spring of 2008?

14 A Yes.

15 Q Were you present at a meeting where the CRNA
16 fund came up as a topic?

17 A Yes.

18 Q And were you -- did you the group at the
19 meeting you were at decide to request an accounting of that
20 fund?

21 A We were informed by Dr. Mason --

22 MR. WRIGHT: Objection.

23 THE COURT: Well, no, no, no. You're getting into
24 hearsay. It's a yes or no question. Did the group at the
25 meeting collectively decide that a request would be made for

1 these records --

2 THE WITNESS: Yes.

3 THE COURT: -- or for an accounting.

4 MR. WRIGHT: Objection. Hearsay to the Court's
5 question.

6 THE COURT: Well, I already allowed that particular
7 question, so that objection is overruled.

8 All right. Go on, Ms. Weckerly.

9 MS. WECKERLY: Well, I don't think we heard an
10 answer.

11 THE COURT: I heard yes.

12 Is that what you said? Yes?

13 THE WITNESS: Yes.

14 THE COURT: Okay.

15 BY MS. WECKERLY:

16 Q I don't want to know anymore about that. At
17 some point after that did you see documentation from that
18 account?

19 A Yes.

20 Q How long after that meeting did you see the
21 documentation?

22 A I don't recall.

23 Q I mean, was it years or months or --

24 A Weeks at best.

25 Q Weeks. Okay. Now, when you saw that

1 documentation, is it something that you still have a copy of
2 or is that --

3 A I never received a copy of it.

4 Q Okay. So you don't have it now?

5 A I do not.

6 THE COURT: Did you like view that --

7 MR. WRIGHT: Where did it go?

8 THE COURT: -- in the office or somebody else's copy
9 or --

10 THE WITNESS: I viewed someone else's copy.

11 THE COURT: All right. And you --

12 MR. WRIGHT: Who?

13 THE COURT: -- never got your own copy?

14 THE WITNESS: That is correct.

15 BY MS. WECKERLY:

16 Q Where were you when you viewed it?

17 A I don't recall the setting, but it was Dr.
18 Mason who showed it to me.

19 Q Okay. Now, the -- to the best of your
20 recollection, when did you come aware that the CDC was coming
21 into the clinic?

22 A In January of 2008.

23 Q Okay. And were you present on the days that
24 the CDC and the Health Department was actually inside the
25 clinic?

1 A To the best of my recollection the CDC was
2 there and perhaps the BLC, the Bureau of Licensing and
3 Certification was there.

4 Q Okay. And you were --

5 A I don't recall specifically seeing Southern
6 Nevada Health District individuals there.

7 Q Were you involved in any meetings with those
8 officials?

9 A No, I was not.

10 Q Did you -- did you speak to --

11 A May -- may I just expound on that?

12 Q Sure.

13 A I was interviewed by a person from the CDC,
14 one of their investigators, and I don't know if that counts as
15 a meeting or not.

16 Q Okay. And that was sometime in that January
17 period when --

18 A Yes, when they were conducting their
19 investigation.

20 Q Did you have any official meetings with any of
21 those representatives?

22 A No, I did not.

23 Q At the time that -- at the time the CDC is in
24 the facility and viewing and looking at records, did you have
25 any conversations with Dr. Desai?

1 A Not that I recall.

2 Q Do you have any recollection of whether he was
3 present in the facility when they were there?

4 A I did not see him present.

5 Q At some point there -- there is a press
6 conference about the hepatitis C outbreak, is that fair?

7 A Yes.

8 Q And to the best of your recollection, when was
9 that?

10 A About March 2008.

11 Q Okay. And were you involved in that press
12 conference?

13 A Yes, I was.

14 Q How -- how did you -- well, let me ask it this
15 way. In the days before the press conference, were you
16 present at meetings with the -- with the partners about the
17 outbreak?

18 A With Dr. Carrol.

19 Q Okay. Was there -- there was a statement --
20 there was a statement read by you at the press conference, is
21 that fair?

22 A Yes, that is correct.

23 Q How -- well, when was it determined that you
24 would be the person that -- that read the statement?

25 A There was a group meeting held which was --

1 MR. WRIGHT: Calls for a date.

2 THE COURT: Right.

3 MR. WRIGHT: I'm objecting.

4 THE COURT: Well, he just said there was a group
5 meeting. When was the group meeting?

6 MS. WECKERLY: Right.

7 THE WITNESS: I don't recall the exact day. It was
8 in 2008.

9 BY MS. WECKERLY:

10 Q Do you know how many days before the -- the
11 press conference that meeting was?

12 A Approximately five or six days.

13 Q Okay.

14 THE COURT: Who was present at the meeting?

15 THE WITNESS: I came in at the tail end of the
16 meeting.

17 BY MS. WECKERLY:

18 Q And why were you late?

19 A Because I was --

20 MR. WRIGHT: Who --

21 THE WITNESS: -- driving --

22 MR. WRIGHT: Objection. The question is who was
23 present.

24 THE COURT: Right. So you came in at the tail end,
25 and when you walk in to the meeting, who all --

1 THE WITNESS: The doctors.
2 THE COURT: -- was there? All of the doctor
3 partners? All --
4 THE WITNESS: As far as I know --
5 THE COURT: -- 15 or whatever?
6 THE WITNESS: -- yes.
7 THE COURT: Okay. And was Dr. Desai at the meeting?
8 THE WITNESS: Yes.
9 THE COURT: And where did this meeting take place?
10 THE WITNESS: At the Rainbow and Oquendo office.
11 THE COURT: All right. Go on.
12 BY MS. WECKERLY:
13 Q And why were you late?
14 MR. WRIGHT: I object.
15 THE COURT: Relevance?
16 MR. WRIGHT: Yes.
17 BY MS. WECKERLY:
18 Q Well, were you the last one at the meeting?
19 A I was the last one at the meeting.
20 Q Were you there when the meeting started or
21 did --
22 A I was not.
23 Q Okay. So were -- I mean, did it -- you came
24 in at some point after it started?
25 A Yes.

1 Q Okay. Why were you late?

2 MR. WRIGHT: Foundation. I -- I -- can we approach
3 the bench?

4 THE COURT: Sure.

5 (Off-record bench conference.)

6 THE COURT: All right. Ms. Weckerly can ask the
7 question.

8 MS. WECKERLY: Thank you.

9 BY MS. WECKERLY:

10 Q So Dr. Carrera, why -- why was it that you
11 were late to the meeting?

12 A Because I was out of town. I was driving
13 between St. George and Las Vegas.

14 Q Was the meeting -- did you know about it? Was
15 it scheduled? Did you know about it prior to the day you
16 actually arrive at it?

17 A No, I did not.

18 Q Okay. What time was it?

19 A It was at night.

20 Q Okay. You eventually get to the location of
21 the meeting and you said it was at the Rainbow offices?

22 A Rainbow and Oquendo, yes.

23 Q Who was present at the meeting?

24 A From my brief observation, all the physician
25 partners in the group.

1 Q Okay. And that would be including Dr. Desai?

2 A Yes, he was.

3 Q The -- the statement that you ultimately read
4 at the press conference --

5 A Yes.

6 Q -- was that discussed at this meeting?

7 A The specifics of the statement were not, but
8 the statement was discussed, yes.

9 Q Was there -- from -- only from Dr. Desai, was
10 there any statements regarding from Dr. Desai who should be
11 the person to read the statement?

12 A Yes.

13 Q What did Dr. Desai say about who should read
14 the statement?

15 A That I should read it.

16 Q And what was Dr. Desai's reason for you being
17 the one to read the statement?

18 A There was more than one reason stated.

19 Q What -- from Dr. Desai, what were the reasons
20 he stated?

21 A He stated because his ejection fraction was
22 dropping, meaning he had a cardiac or heart problem. And that
23 his doctor, his treating doctor, had advised him not to give
24 the statement himself.

25 Q Okay. Did Dr. Desai offer any other reasons

1 as to why you should be the person to read the statement?

2 A He stated that it should not be Dr. Carrol
3 because Dr. Carrol was involved in the Rexford case, which is
4 a malpractice trial. He stated that it should not be Dr.
5 Sharma because Dr. Sharma was on the State Board of Health and
6 it didn't -- he didn't want it to seem that Dr. Sharma was
7 using his position to influence public opinion. He also
8 stated that Dr. Faris flat out refused to give the statement.

9 Q Okay. Did Dr. Desai say anything else, him
10 personally, about you being the one to read the statement?

11 A There were various rationalizations offered,
12 one being that he thought I was not a controversial individual
13 and would be well received.

14 Q All right. Any other thing that you remember
15 that Dr. Desai said?

16 A Dr. Desai per se, no.

17 Q Okay. Did Dr. Desai agree to be present when
18 you read the statement?

19 A Yes, he did.

20 MR. WRIGHT: Foundation.

21 BY MS. WECKERLY:

22 Q Was it at the -- at this pre-meeting or
23 pre-press conference meeting did Dr. Desai talk to you about
24 whether or not he'd be present while you read the statement?

25 A At the very last moment he said he didn't feel

1 well, so he wasn't going to go.

2 MR. WRIGHT: This is --

3 THE COURT: Is this at the --

4 MR. WRIGHT: -- at this meeting?

5 THE COURT: -- meeting, or was this right before
6 this?

7 THE WITNESS: Just before the press conference.

8 THE COURT: Okay. And who --

9 MR. WRIGHT: Foundation.

10 THE COURT: I'm -- who wrote -- maybe Ms. Weckerly
11 will get to the content, so I won't ask the question.

12 BY MS. WECKERLY:

13 Q Well, before the press conference occurs, at
14 this meeting at Rainbow, does Dr. Desai make any statements to
15 you about whether or not he will be present while you read the
16 statement?

17 A At the meeting several days before.

18 Q Okay.

19 A I jumped ahead. I'm sorry.

20 Q That's okay.

21 A But at the meeting several days before --

22 MR. WRIGHT: Object. Foundation.

23 THE COURT: Well, I -- we're getting there.

24 MR. WRIGHT: Okay. Several days before.

25 THE COURT: Several days before the press

1 conference?

2 THE WITNESS: Before the press conference.

3 THE COURT: Okay. So as I understand your
4 testimony, correct me if I'm wrong, there is the meeting on
5 Rainbow that you get to last. And then is there a subsequent
6 meeting prior to the press conference?

7 THE WITNESS: Yes.

8 THE COURT: And where and when did that meeting
9 occur?

10 THE WITNESS: Shadow Lane.

11 THE COURT: And how many -- and you said that was a
12 few days before the press conference?

13 THE WITNESS: It was -- the Shadow Lane meeting was
14 immediately before the press conference.

15 THE COURT: Okay. And who was present at that
16 Shadow Lane meeting?

17 THE WITNESS: Dr. Desai was there, Dr. Carrol was
18 there, Dr. Nayyar was there, Abe Vigil who is an attorney with
19 Lewis and Roca was there.

20 THE COURT: All right.

21 THE WITNESS: And there were various individuals
22 from R&R Partners there.

23 THE COURT: All right. And did R&R Partners draft
24 the statement or did they write the statement?

25 THE WITNESS: It was written by three entities, R&R

1 Partners, Dr. Carrol, and by Abe Vigil.

2 THE COURT: I'm sorry?

3 THE WITNESS: Abe Vigil, Lewis and Roca.

4 THE COURT: Okay. So your lawyer also helped with
5 the statement?

6 THE WITNESS: My understanding is yes.

7 THE COURT: Okay.

8 Go on, Ms. Weckerly, and just be mindful that we --
9 since the lawyers are there, I don't know if any of this is
10 going to get into privileged communication.

11 MS. WECKERLY: Okay.

12 BY MS. WECKERLY:

13 Q At that -- at that meeting you said R&R
14 Partners was there?

15 A Yes.

16 THE COURT: Oh, that's true. I'm sorry.

17 BY MS. WECKERLY:

18 Q Who -- who are they?

19 A They are a public relations firm.

20 Q Okay. They're not lawyers?

21 A To my knowledge they are not.

22 Q Okay. So at that meeting does Dr. Desai
23 personally tell you whether he'll be present at the press
24 conference?

25 A I insist -- I had asked why Dr. Desai couldn't

1 give the comment -- the statement himself, and I was told that
2 it was --

3 MR. WRIGHT: Is this --

4 THE WITNESS: -- health reasons.

5 MR. WRIGHT: Foundation. Is this the same meeting?

6 THE COURT: I'm assuming we're talking about the
7 same meeting.

8 BY MS. WECKERLY:

9 Q At this meeting --

10 A Yes.

11 Q -- do you have a conversation with Dr. Desai
12 about him being present at the press conference?

13 A Yes.

14 Q In that conversation with Dr. Desai at this
15 meeting, do you have -- do you ask him why he is not the one
16 giving the statement?

17 A That had happened before.

18 Q Was that at the Rainbow meeting?

19 A That had happened before at our -- either in
20 our offices or at R&R Partners. And it had happened with --
21 and Abe Vigil was involved in some of that, too.

22 Q Okay. I want to move to the -- the meeting
23 right -- right before the press conference, so sort of back
24 where we were.

25 A Okay. Immediately before.

1 Q Immediately before. Do you have a
2 conversation with Dr. Desai about whether he's able to attend
3 the press conference?

4 A Yes. He told me that he was not feeling well,
5 so therefore he would not be attending.

6 Q How long before the press conference was --
7 was that conversation with Dr. Desai?

8 A Immediately. We were getting ready to go. It
9 was decided that Dr. Carrol and Dr. Nayyar and Dr. Desai
10 would --

11 MR. WRIGHT: Objection to the decision. Foundations
12 for this. I'd like to know what Dr. Desai --

13 THE COURT: All right. Well --
14 BY MS. WECKERLY:

15 Q When Dr. Desai -- you said Dr. Desai has a
16 conversation with you immediately before the press conference
17 where he says --

18 A Yes.

19 Q -- he's unable to attend. When you -- what
20 does immediate mean? How long before the press conference was
21 that?

22 A As we were preparing to go to the Health
23 District offices on Shadow Lane.

24 THE COURT: Now, when Dr. Desai says he doesn't feel
25 well, he doesn't want to be at the press conference, is

1 everybody still there in the room, meaning the other
2 physicians and the R&R people and the lawyer from Lewis and
3 Roca?

4 THE WITNESS: Yes.

5 BY MS. WECKERLY:

6 Q And when he says that, do you say anything in
7 response?

8 A I'm stunned. I don't know what to say.

9 Q Okay. And so is it -- do you just say
10 nothing?

11 A That's correct.

12 Q Eventually you go to the press conference?

13 A Yes.

14 Q Which doctors were present at the press
15 conference?

16 A Clifford Carrol and Sanjay Nayyar.

17 Q That's Dr. Nayyar?

18 A Dr. Nayyar.

19 Q You read the statement, and I think the Judge
20 asked you about that, that was written by three other
21 entities?

22 A Yes, that is correct.

23 Q Had you approved that statement or had you
24 read it before?

25 A I had read it before.

1 Q And did you have input into its content?

2 A I had no constructive input into its content.

3 Q Sometime -- sometime after the -- after that
4 press conference, did the doctors ever meet again?

5 A Yes.

6 Q How long after that?

7 A Immediately.

8 Q The same day?

9 A Immediately after the conference.

10 Q Okay. So that would be the same day or --

11 A Yes.

12 Q Okay. Who -- who was present at that meeting?

13 A Dr. Desai and various other physician
14 partners.

15 Q Okay. Were any --

16 MR. WRIGHT: Foundation. Location. Location.

17 MS. WECKERLY: I get it. I just want to be able to
18 ask the question first.

19 BY MS. WECKERLY:

20 Q Where did that meeting take place?

21 A 700 Shadow Lane.

22 Q Okay. Where in Shadow Lane was that?

23 A The conference room on the first floor.

24 Q Okay. And the doctors are there, it's in
25 Shadow Lane, and it's immediately after the press conference;

1 right?

2 A Yes.

3 Q Dr. Desai is there?

4 A Yes.

5 Q Does he say anything about what's happened?

6 A I'm sure he did, but I don't recall exact

7 details.

8 Q Okay. At that meeting, you -- you are the one

9 who has just read this statement; correct?

10 A Yes.

11 Q Do you -- well, let me ask it this way. After

12 that meeting, is there any other meeting with the -- with all

13 of the doctors and Dr. Desai?

14 A Yes.

15 Q How long after -- how many -- like in days,

16 how many days after the press conference is that meeting?

17 A Within a few days.

18 Q Okay. Where does that meeting take place?

19 A At the law office of Alan Sklar.

20 Q And who is present at that meeting?

21 A Physician partners, including Dr. Desai.

22 Q Was -- was R&R Partners, the PR people there?

23 A Not that I recall.

24 Q Were any -- was anyone besides the -- the

25 physician partners present?

1 A Various attorneys.

2 Q And whose -- whose attorneys were those?

3 A They were corporate attorneys, meaning Abe
4 Vigil, I believe Mr. Wright was there, I believe Ms. Stanish
5 was there.

6 MS. WECKERLY: Can I have the Court's indulgence for
7 one second?

8 THE COURT: Sure.

9 MR. WRIGHT: Can we approach the bench?

10 THE COURT: Well, let -- let -- sure.

11 (Off-record bench conference.)

12 THE COURT: All right. Any conversations that
13 occurred at that meeting, since it's the partners and the
14 attorneys, would be covered by the attorney-client privilege
15 and absolutely cannot be questioned about. And so the State
16 needs to move on because you cannot ask about the content of
17 privileged communications.

18 BY MS. WECKERLY:

19 Q After -- well, after all this -- after the
20 press conference, I guess, so we'll set the time period in
21 2008, did you face disciplinary action or have action taken
22 against you by the medical board?

23 A Yes, I did.

24 Q When -- when was that?

25 A It ran for a period of time. It commenced in

1 April 2008.

2 Q And your -- as you sit here today, your
3 license has been restored?

4 A Yes, completely.

5 Q When the Las Vegas Metropolitan Police
6 Department and the FBI were investigating this case -- you
7 recall that time period?

8 A Yes.

9 Q Did you reach an immunity agreement regarding
10 providing information in the case?

11 A Yes.

12 Q And do you remember when that was?

13 A Not exactly.

14 Q What's your understanding of your obligation
15 according to that agreement?

16 A To tell the truth and nothing but the truth.

17 Q And what do you get in exchange for that?

18 A I was given immunity.

19 Q From prosecution?

20 A From prosecution, yes.

21 Q Thank you.

22 MS. WECKERLY: I'll pass the witness.

23 THE COURT: All right. Maybe we should take our
24 lunch break now. I'll see counsel up here.

25 (Off-record bench conference.)

1 THE COURT: Ladies and gentlemen, we're going to go
2 ahead and take our lunch break. We'll go ahead and be in
3 recess until 1:20 for the lunch break.

4 During the lunch break you are reminded that you're
5 not to discuss the case or anything relating to the case with
6 each other or with anyone else. You're not to read, watch, or
7 listen to any reports of or commentaries on the case, person
8 or subject matter relating to the case by any medium of
9 information. You are not to do any independent research by
10 way of the internet or any other medium, and you're not to
11 form or express an opinion on the trial.

12 I would also note that if any of you have
13 inadvertently heard through the media a report of this or if
14 someone has tried to talk to you about the case or anything
15 like that, just please inform my bailiff, you know, privately
16 sometime during the break.

17 Notepads in your chairs and follow Kenny through the
18 rear door. We'll see you back after lunch.

19 (Jury recessed at 11:54 a.m.)

20 THE COURT: You're excused, Doctor, for the lunch
21 break. Just, again, don't discuss your testimony with anyone
22 else. Make sure you're back -- you know, get back a few
23 minutes before 1:20 so we can make sure we can start right on
24 time.

25 THE WITNESS: Thank you.

1 (Outside the presence of the witness.)

2 THE COURT: All right. Mr. Wright, you wanted to
3 note your objection that you made at the bench on the record;
4 correct?

5 MR. WRIGHT: Yes.

6 THE COURT: All right. Go ahead.

7 MR. WRIGHT: I -- I think what happened here is
8 there is this press conference thing that the State is using
9 for consciousness of guilt, and I think they are also
10 establishing consciousness of guilt because they had retained
11 right after the press conference Margaret Stanish and Richard
12 Wright. And that was brought before the jury improperly by
13 the prosecution. They knew it was privileged. That came out
14 in the Metro interview or Grand Jury, Metro interview, and
15 even at that time Pitaro stopped it as privileged in the Metro
16 interview.

17 Now, tell me, why was that brought out that they had
18 lawyered up and what is the relevance of it, forcing me to
19 step forward, stop it, object, and you having to say it's
20 privileged, and now the jury wondering about this conspiracy?

21 THE COURT: Well, and just to clarify the record, at
22 the bench Mr. Wright requested -- I gave the option of an
23 instruction informing everyone that that was privileged and
24 prohibiting the State from inquiring further into it or doing
25 nothing. You opted for that sort of statement or instruction.

1 And you had additionally asked that the Court to
2 advise the jury or admonish the jury that -- I guess advise
3 would be the better word -- that the State had committed
4 misconduct in asking the question. The Court at that point
5 refused to give the sort of misconduct instruction. Is that a
6 correct --

7 MR. WRIGHT: Yes.

8 THE COURT: -- synopsis of what occurred at the
9 bench?

10 MR. WRIGHT: Yes.

11 THE COURT: All right.

12 State?

13 MS. WECKERLY: My recollection differs slightly. I
14 don't think anyone had to step forward. I think when I
15 established who the participants were at the meeting I asked
16 the Court if I could have the Court's indulgence. My purpose
17 in asking who was at the meeting was my belief that R&R
18 Partners was present, as well as other individuals outside of
19 the attorney-client privilege.

20 If that had been the case, it's the State's position
21 that the communications would not have been privileged and
22 anything Desai said at that meeting would have been
23 admissible. When he did not describe R&R Partners as being
24 present or I couldn't secure anyone else, then I left the
25 topic alone. And I don't think anything about that is

1 improper.

2 MR. WRIGHT: And what --

3 THE COURT: Let me ask this. On the issue of
4 whether or not you knew in advance that R&R Partners wasn't
5 present and it was just the lawyers and the partners.

6 MS. WECKERLY: I thought they were present.

7 THE COURT: Because Mr. Wright is saying --

8 MR. WRIGHT: Who?

9 THE COURT: -- no, it was clear --

10 MS. WECKERLY: R&R.

11 THE COURT: -- from the Metro statement and the
12 Grand Jury transcript -- and offhand, I don't know what's in
13 that or not in that. So I can't opine at this point. But Mr.
14 Wright, as I understand it, is saying that you knew or should
15 have known that the only people at the meeting were partners
16 and lawyers, not R&R or anybody else. And what does the State
17 say to that assertion?

18 MS. WECKERLY: We -- we thought they were present at
19 that meeting. I tried to get him to say that. He didn't.

20 MR. WRIGHT: How could you think that?

21 MS. WECKERLY: Because they were present at a bunch
22 of meetings.

23 MR. WRIGHT: No. In the Metro statement when Pitaro
24 shuts it down --

25 MS. WECKERLY: No, there --

1 MR. WRIGHT: -- how did you think that --
2 MS. WECKERLY: Because there's --
3 MR. WRIGHT: -- and what did you intend to elicit
4 from that?
5 MS. WECKERLY: Because if R&R was present, what
6 Desai said would not --
7 MR. WRIGHT: What did he say?
8 MS. WECKERLY: -- be privileged? He said that he
9 wasn't -- he wasn't concerned, he was going to be fine, and a
10 patient hadn't died, so it wasn't going to be a big deal.
11 MR. WRIGHT: And how do you know that?
12 MS. WECKERLY: From talking to the witness.
13 MR. WRIGHT: When?
14 MS. WECKERLY: This morning.
15 MR. WRIGHT: Okay. I didn't see that in any
16 statement, and I didn't know you breached attorney-client
17 privilege until right now.
18 MR. STAUDAHER: We didn't breach attorney-client
19 privilege.
20 MR. WRIGHT: Pitaro --
21 MR. STAUDAHER: That -- that actually took place --
22 THE COURT: It's not their --
23 MR. STAUDAHER: -- at the --
24 THE COURT: -- privilege to breach.
25 MS. STANISH: Now we're witnesses.

1 THE COURT: Mr. --

2 MR. WRIGHT: It's not?

3 THE COURT: Well, it's -- look, Dr. Carrera wanted
4 to breach the privilege. Now, obviously, he's not the sole
5 holder of the privilege, so he can't elect to waive the
6 privilege. Whether or not he knows that, I don't know. But
7 clearly he's not the sole holder of the privilege. So if he
8 was, then -- if he were, he could -- he could waive it. He
9 doesn't have the ability to waive that privilege, we're all in
10 agreement, because it's a shared privilege among all of the
11 partners.

12 Now, getting to Ms. Weckerly's conduct -- well, of
13 course --

14 MR. WRIGHT: But how --

15 THE COURT: -- it's a shared privilege.

16 MR. WRIGHT: I agree. But how am I hearing this for
17 the first time right now, a statement my client made that you
18 have knowledge of, and I didn't even know about it?

19 MS. WECKERLY: He told us that -- we met with Mr.
20 Pitaro and Carrera this morning.

21 MR. WRIGHT: And you heard --

22 THE COURT: So Tom Pitaro --

23 MR. WRIGHT: -- a statement --

24 THE COURT: -- is sitting there?

25 MR. WRIGHT: -- of my client --

1 MS. WECKERLY: Yes.

2 MR. WRIGHT: -- and didn't reveal it to me.

3 MS. STANISH: And now -- and now us defense
4 attorneys are witnesses.

5 MS. WECKERLY: Well, the statement didn't come in.

6 MR. WRIGHT: Well, do you understand the rules of
7 discovery?

8 MS. WECKERLY: I do.

9 MR. WRIGHT: Okay. Why didn't I know about it?

10 MS. WECKERLY: Well, we --

11 MR. WRIGHT: I could have walked right into this
12 thing and you were setting me up.

13 MR. STAUDAHER: Actually, if you're present at the
14 meeting, you would --

15 MS. WECKERLY: You know about it.

16 MR. STAUDAHER: -- then know about it.

17 MR. WRIGHT: Present at --

18 MS. WECKERLY: You would have heard --

19 MR. STAUDAHER: If you're talking --

20 MS. WECKERLY: -- the statement.

21 MR. STAUDAHER: -- about this meeting, and did
22 you --

23 MR. WRIGHT: What did --

24 MR. STAUDAHER: -- not just say --

25 MR. WRIGHT: They invaded the --

1 MR. STAUDAHER: -- that this happened?

2 THE COURT: Okay.

3 MR. WRIGHT: I want --

4 THE COURT: First of all --

5 MR. WRIGHT: -- a mistrial, also.

6 THE COURT: Okay. First of all, number one, whether
7 or not the defense knows or doesn't know or should have known
8 or may have known about a statement does not alleviate the
9 State's responsibility to turn the statement over in
10 discovery. So I'm -- we're clear on that, and you folks know
11 that. You can't say, oh, we didn't turn over these statements
12 because you ought to have known about it. That's not the
13 standard.

14 Now, when the statement was revealed this morning,
15 you know, Dr. Carrera's lawyer, Mr. Pitaro, was there.
16 Apparently Mr. Pitaro didn't feel concerned enough about the
17 privilege to say anything at that point in time when there was
18 questioning.

19 I think the State, once you knew and intended to
20 elicit the statement, you should have pulled Mr. Wright and
21 Ms. Stanish aside and told -- and Mr. Santacroce too, and told
22 them, or at least Mr. Wright and Ms. Stanish at a minimum, and
23 told them that, hey, we just learned of this statement from
24 your client Dr. Desai at this meeting. And I think that was
25 your obligation and you didn't do it, regardless of whether or

1 not they were at the meeting and may have known about the
2 statement because maybe they don't think the statement
3 happened. Or maybe --

4 MR. WRIGHT: It didn't happen.

5 THE COURT: Well, you know, either way it doesn't
6 absolve you of your duty. So you should have done that, you
7 should have told them about the statement, particularly when
8 you intended to elicit the testimony on the statement.

9 So I don't see at this point a good excuse for not
10 pulling them aside ahead of time. We didn't start right on
11 time because we were waiting for two jurors so there was
12 plenty of time this morning. You were all here in your places
13 when we were set to start, and the State could have easily
14 pulled them to the side and told them about the statement.

15 At that point in time Mr. Wright and Ms. Stanish
16 could have said, whoa, this is a privileged communication, and
17 you could have found out who was there. You know, if you
18 didn't for some reason believe them that it was only them
19 there, you could have talked to the witness out of everybody's
20 presence, or we could have hauled him in and I could have
21 asked him who was present at the meeting before we ever
22 brought the jury in and before anybody heard anything about
23 this meeting.

24 So I really don't understand why, once you knew
25 about it and once you intended to use it, you didn't inform

1 them about it. You know, I recognize, you know, I know myself
2 as a prosecutor, many times you hear new information, you
3 know, when you're pretrialing right -- you know, that was in
4 nothing. But that, again, that's not unusual. I don't see
5 anything wrong with that because that happens all the time.

6 But I think once you knew about the statement and
7 intended to use it, you should have told them, given them a
8 heads up, and like I said, this whole issue of privileged or
9 not privileged could have been resolved before the jury was
10 ever brought in. So I don't know if you want to address why
11 that wasn't done, but, frankly, I don't -- I think it should
12 have been.

13 MS. WECKERLY: I -- you know, I think it should have
14 been. We have been doing that. We've had witnesses that
15 we've alerted them to that have said, you know, I didn't see
16 anything wrong at the clinic or there was another statement
17 that we had attributed to Desai that we emailed them about
18 because we learned about it in a pretrial. I assumed they --
19 and I understand my obligation --

20 THE COURT: Right.

21 MS. WECKERLY: -- is to tell them.

22 THE COURT: I mean, it's still your obligation
23 because, again, a) the statement may never have occurred
24 according to their recollection, so right there they would
25 need to know, and b) even if it did occur and even if they

1 agree, it's not the defense's duty. It doesn't absolve
2 anybody of their obligations to disclose things because, oh,
3 well, we think you already knew about it. I mean, that's not
4 -- and, again, you know, they -- they -- their position may be
5 that never happened.

6 MR. WRIGHT: Right. And --

7 THE COURT: Or if it did happen, you know, you never
8 know. Was that a whispered aside thing when somebody else was
9 talking that they didn't hear. I mean, there's a million ways
10 that something can occur in a meeting that somebody is not
11 cognizant of who was at that very same meeting.

12 So on the issue of a mistrial, I don't see the
13 prejudice that we have to declare a mistrial here. First of
14 all, you know, she asked about the meeting. The jury was
15 advised it's privileged.

16 MR. WRIGHT: Okay. What's the --

17 THE COURT: The Court advised the State, hey, you
18 can't ask about this, it's privileged. And there have been
19 other times that privilege has come up where I've said to
20 witnesses, okay, that might be privileged, you don't need to
21 -- you don't need to talk about that.

22 On the assertion that somehow he lawyered up --

23 MR. WRIGHT: He did.

24 THE COURT: -- I mean, I get that and that's
25 prejudicial because he lawyered up and --

1 MR. WRIGHT: And points at us.

2 THE COURT: I didn't recall the witness pointing at
3 you.

4 MR. WRIGHT: He stand Stanish and Wright.

5 MS. STANISH: He said our names.

6 THE COURT: Did he physically point at you or did
7 he --

8 MR. WRIGHT: Well, I think they know who we are.

9 THE COURT: Well, okay, I mean, I thought when you
10 said --

11 MS. STANISH: It was a positive --

12 THE COURT: Look, this is --

13 MS. STANISH: -- identification.

14 THE COURT: -- a written transcript. And when it's
15 reviewed, you used the word point. And so our Nevada Supreme
16 Court, if it ever gets there, are they going to think the
17 witness said like they would to a defendant, Richard Wright
18 and Margaret Stanish, pointing, I want it clear on the record
19 that that didn't occur.

20 MR. WRIGHT: Correct. I never --

21 THE COURT: That it was just --

22 MR. WRIGHT: That was a figure of speech.

23 THE COURT: Okay. Well, to me, it makes it worse if
24 somehow he pointed at you as if you were a defendant sitting
25 there, so I --

1 MR. WRIGHT: I wasn't intending --

2 THE COURT: -- wanted to clarify.

3 MR. WRIGHT: -- to leave that impression.

4 THE COURT: Okay. Well, I just -- you know, the
5 written record is often very different from what we all
6 understood happened in court and the dynamics and whatnot.

7 MR. SANTACROCE: Your Honor, I need to make --

8 THE COURT: I just don't see the prejudice there,
9 truthfully. I mean, to me, I understand your argument, but I
10 really don't believe that the jury is going to sit there and
11 think, oh, wow, you know, he lawyered up with criminal defense
12 lawyers right away as opposed to Lewis and Roca.

13 And they don't know, you know, Lewis Roca, do they
14 have a criminal branch or it's strictly civil. I mean, I just
15 don't see that there is that much prejudice there that the
16 jury is going to think, wow, they knew about their guilt and
17 so they went out and hired Margaret Stanish and Richard Wright
18 as opposed to just having their corporate counsel present. I
19 mean, that's essentially your argument as I understand that.

20 MR. WRIGHT: That's correct that's my argument
21 because that's what was laid out there, and then we shut it
22 down, it's privileged, they can't talk about it. So now the
23 jury knows there was some meeting that took place with me and
24 Margaret representing Dr. Desai and they can't know what went
25 on at the meeting. How could that even have all been brought

1 out and before the jury?

2 MR. STAUDAHER: He didn't say anything about who
3 represented whom. He just said that Ms. Stanish was present
4 at the meeting.

5 MR. WRIGHT: Oh.

6 MS. STANISH: Right.

7 MR. WRIGHT: So they thought --

8 MR. STAUDAHER: I understand that, but I'm saying
9 that there was a lot of people present at the meeting. When
10 she went through that whole issue it was -- again, there were
11 other attorneys present, but clearly this -- this witness here
12 was present. If this witness here is present, he's not
13 represented criminally at all in the case, and he's certainly
14 not represented by these two attorneys.

15 THE COURT: Well, and that's Mr. Wright's point.
16 Mr. Wright's point is, you know, if Dr. Desai didn't think
17 he's maybe done something criminal, then why would he have
18 hired leading criminal defense lawyers to sit in at this
19 meeting where you already have Lewis and Roca, who, by the
20 way, wasn't corporate counsel because corporate counsel is
21 Sklar and Williams. We've already heard through other --

22 MR. WRIGHT: No, they -- they were corporate.

23 MR. STAUDAHER: They were there at the meeting, as
24 well, apparently.

25 THE COURT: Right. Well, I'm saying the testimony

1 up until this point has been their corporate counsel was Sklar
2 and Williams. Now all of the sudden we're hearing about new
3 corporate counsel, Lewis and Roca, who may or may not have
4 been brought in once the crisis erupted.

5 Because the previous testimony, as I heard it, was,
6 no, it was all Sklar and Williams was the corporate counsel.
7 Now we're hearing -- this is just kind of an aside comment --
8 now we're hearing about new civil counsel being brought in.
9 And I don't know if that was through their insurance carrier
10 or just -- just they were strictly corporate. I don't know.

11 But, I mean, the issue, Mr. Wright, is clearly,
12 well, is the prejudice or potential prejudice against your
13 client so great that we need to declare a mistrial and that
14 he's denied his right to a fair trial by the fact that a
15 meeting occurred and there was criminal defense counsel as
16 well as corporate counsel and, you know, various partners were
17 present at the meeting.

18 MS. STANISH: Your Honor, if I may, I don't feel
19 that the jury is so ignorant that they can't put two and two
20 together. This meeting that occurred at Attorney Sklar's
21 office was brought out and was in the wake of that press
22 conference which the DA has stated as their -- stated at the
23 bench, I don't know if it's been made a matter of record, but
24 they wanted to get into the press conference to show that Dr.
25 Desai was conscious of his guilt, and therefore compelled Dr.

1 Carrera to make the press statement. And then a few days
2 later there's Mr. Wright and I sitting in a meeting with other
3 attorneys and with the various doctors.

4 That's prejudicial. That's going to hang over this
5 jury and basically put criminal defense attorneys in some kind
6 of conspiracy or something. I just -- I just feel it's
7 something that you can't just force the elephant out of the
8 room at this point. And it is just outrageous that this issue
9 was even raised in light of the knowledge of the DA on this.

10 THE COURT: Well, I'm kind of wondering, this is
11 just an aside, but I'm kind of wondering why when Dr. Carrera
12 -- I mean, I understand Mr. Pitaro is there to protect Dr.
13 Carrera's interests, but I'm kind of curious, then, why Mr.
14 Pitaro didn't say, well, this would be a privileged
15 communication. I mean, I get his loyalty is solely to Dr.
16 Carrera, not to Dr. Desai, not to the partners, so he may not
17 have cared, frankly. But it could be construed two ways.

18 It could be that, you know, again, his -- his sole
19 allegiance, as it should be, is to Dr. Carrera. So that's one
20 interpretation of why nothing was said. The second
21 interpretation of why nothing was said is because it wasn't a
22 privileged meeting because you had R&R.

23 Now, I understand from the bench that the defense's
24 position is, oh, well, R&R were working for the defense. But,
25 to me, press releases and public relations doing come under

1 the umbrella of attorney-client privilege the way an
2 investigator would or a jury consultant or other things. I
3 mean, to me, now you're getting -- really bringing -- you
4 know, getting really into tangential. Because I don't think
5 you're going to tell your press people, well, this is what
6 really happened, but spin it so that, you know, we look good
7 in the public.

8 I mean, to me, it's an aside kind of an entity, you
9 know, who is functioning as public relations press and, you
10 know, I would have to look -- see if there's any case law on
11 this, but I'm not aware of that privilege being extended to
12 cover somebody who is functioning in that role, dealing with
13 the media and essentially -- you know, I think he -- they
14 would have written it.

15 The lawyer is going to look it over to make sure
16 there is no admissions in there or anything that could be used
17 civilly, probably was their primary focus, or criminally
18 against -- you know, against the practice group. And so, you
19 know, that's --

20 MR. WRIGHT: I -- I'd just like --

21 THE COURT: -- kind of where we are on the mistrial.

22 MR. WRIGHT: I understand. I'd just like to point
23 out I was totally blindsided on this.

24 THE COURT: I believe you.

25 MR. WRIGHT: I -- I -- I knew this witness, from my

1 judgment, is vindictive and a snake. My words. And so I said
2 I want to be careful with this witness. I asked in limine
3 don't bring out hearsay. Watch him. He's a snake getting
4 ready to pounce. My characterization of it.

5 And so I was on my toes on this. I had no idea they
6 were going to go to this lawyer meeting because when it came
7 up in the Metro interview, it wasn't explored. Pitaro shut it
8 down as attorney-client privilege, and they abided by it and
9 they knew it was privileged.

10 So when -- when I was jumping and squawking about
11 the press conference and stuff, I wasn't fearing they were
12 going to go into this meeting. I thought they were going to
13 bring out hearsay about what happened -- about why so and so
14 didn't go. And so I didn't have any idea. And I don't know
15 how that wasn't a conscious decision by the State. Metro --
16 in the Metro statement it's -- it was privileged by Pitaro and
17 you can't go in there.

18 And so now they -- they intentionally tried to bring
19 it out, and knowing that they expected the witness to say
20 something damaging I didn't know about. That's misconduct,
21 Judge. I can't -- I can't spin it any other way.

22 MR. STAUDAHER: Your Honor, if I -- if I may just
23 for a moment.

24 THE COURT: Well, let's hear from Mr. Santacroce,
25 and then the State can respond. And, you know, I think it's

1 really Ms. Weckerly who needs to respond because it's Ms.
2 Weckerly who asked the question and it's what Ms. Weckerly --
3 you know, what she was doing, not, you know, both -- you know,
4 Ms. Weckerly -- you know, Ms. Weckerly is the one who asked
5 the question and so I think it's her duty to respond.

6 Again, the analysis isn't necessarily whether or not
7 she should have done it. The analysis is, okay, it was done.
8 There has been an instruction given by the Court. You know,
9 the Court tried to convey to Ms. Weckerly don't go here. This
10 is privileged. And so, you know, having done that, you know,
11 is -- is this so prejudicial that we have to declare a
12 mistrial. That's really, you know, the only issue at this
13 point.

14 Mr. Santacroce.

15 MR. SANTACROCE: For the record, Your Honor --

16 THE COURT: And how deliberate was it? You know,
17 did she have a good faith belief at the time she asked the
18 question that R&R Advertising was there. And, again, in my
19 view, if they're there, it's not a privileged communication.
20 And she asked about another meeting where the Court
21 erroneously had forgotten they were there and said this may be
22 privileged. And then Ms. Weckerly in the immediate meeting
23 before that said was R&R Partners there, who else was there?
24 And he said R&R Partners, then she asked the question about
25 the meeting.

1 And the Court, I think, said, oh, yeah, that's right
2 that they were there, so it wouldn't be privileged. So that
3 had already happened one time where a conversation came in
4 about a meeting with lawyers and R&R Advertising and the
5 partners. And so it's not like it just -- that whole issue of
6 whether or not that made it privileged if then -- if they were
7 there came out of left field, because we just had a prior
8 meeting where they're there and they're allowed to talk about
9 it.

10 Mr. Santacroce.

11 THE RECORDER: If he could come to the counsel table
12 or the lectern, please.

13 THE COURT: Oh, the court recorder is having trouble
14 hearing, so would you just stand at the lectern.

15 MR. SANTACROCE: For the record, I just want to join
16 in Mr. Wright's motion and objection. And I would remind the
17 Court that this is now the second defense motion for --
18 objection for prosecutorial misconduct. And I think it's now
19 becoming cumulative.

20 And I'll also remind the Court that there's two
21 people on trial here, and the taint that is given to the
22 doctor is spilling over into Mr. Lakeman's right to a fair and
23 impartial trial. There are conspiracy allegations in the
24 indictment, and I don't care what kind of cautionary
25 instruction you give the jury. The fact is is that any of the

1 misconduct taint that goes to Dr. Desai, inures to Mr.
2 Lakeman.

3 And for those reasons I have to join in Mr. Wright's
4 motion regrettably because I don't want to see a mistrial. I
5 want this matter to go forward. But I think at this point the
6 damage has been done. We are now getting cumulative
7 misconduct by the prosecution where -- at what point does it
8 not become harmless?

9 THE COURT: Well, Mr. -- I don't see any prejudice
10 at all, really, to Mr. Lakeman. I mean, the whole idea here
11 has been, you know, it's Dr. Desai and he's, you know,
12 directing everybody, manipulating everyone. You know, these
13 doctors, even Dr. Carrera is, you know, so, whatever,
14 intimidated or that he's going to be the front man on this --
15 on this thing.

16 And so, to me, if Dr. Desai is so -- you know, if
17 you accept Mr. Wright's theory, which I'm not necessarily
18 accepting, that Dr. Desai is so cognizant of his guilt that he
19 rushes out to hire lawyers, I mean, I -- I just don't see that
20 as terribly prejudicial against Mr. Lakeman. And I understand
21 your theory is kind of -- your defense is multifaceted. One
22 is that it didn't come from the propofol. It would have come
23 from another agent.

24 But then there's also -- you know, Mr. Lakeman is
25 just an employee. He had no authority over anybody. He's

1 making a buck-twenty a year when these doctors are making, you
2 know, 2 million and -- you know, let's double that. That
3 means Desai is making at least 4 million, but who knows,
4 because nobody bothered to request an accounting during the
5 time this was all going on. Maybe there has subsequently been
6 an accounting. I don't know.

7 You know, so I think that that's not inconsistent
8 with your theory that Mr. Lakeman is just, you know, kind of
9 like doing what everybody is told, what he's been told by Dr.
10 Desai who is -- I mean, according to the State --
11 intimidating, belittling people, you know. And the doctors
12 are even -- they're going along with it. And so, you know,
13 what's Mr. Lakeman to do if the physicians are going along
14 with this? And, you know, even to the point of Carrera
15 standing up at this press conference.

16 So I don't see that if Dr. Desai was cognizant of
17 guilt, if that's how you interpret that, I don't see that as
18 at all prejudicial and it could even be construed the other
19 way. You know, it's Desai, Desai, Desai, and it's just poor
20 Mr. Lakeman happened to be the one that was involved with the
21 -- you know, the hepatitis infection that day. You know, so I
22 can see that cutting both ways with respect to your client.

23 Ms. Weckerly, you want to respond?

24 MS. WECKERLY: Yes. With regard to -- I'm assuming
25 Mr. Santacroce's reference is to Mr. Mathahs. And I believe

1 the Court took measures that Mr. Mathahs, there was no
2 communication with him that he was in breach of his proffer.

3 And I believe even after Mr. Mathahs' testimony, Mr.
4 Wright, of all people, acknowledged that there was no
5 communication with him. And because his testimony didn't
6 change, there wasn't any indication that there was
7 intimidation applied to Mr. Mathahs in order to try to
8 influence his testimony to conform to the proffer. So, I
9 mean, cumulative, that was a zero in my mind.

10 In this situation, I can honestly tell the Court I
11 thought R&R Partners was at the meeting. There were several
12 meetings that the doctor partners had with various individuals
13 in order to, I guess, address what they thought was potential
14 civil litigation in the case. And if that were the case and
15 other people were present, there is no -- there is no
16 privilege.

17 I acknowledge to the Court that it would be an error
18 to elicit a statement that we did not inform counsel about,
19 but that statement didn't come in. I know we're under an
20 obligation to do that. We have done that in other instances.
21 That is an oversight. I agree with them on that.

22 I don't see the remedy, though, as a -- as a
23 mistrial, though, because it didn't come in. So I mean, I
24 don't know what the -- what the effect was. So, I mean, based
25 on that, I don't think there's enough to warrant a mistrial.

1 THE COURT: I don't think so either. I mean, again,
2 here's the thing. The statement didn't come in, so the sole
3 ground would be an inference of Dr. Desai being knowledgeable
4 of his guilt that the jury would say, oh, well, he must be
5 guilty because he lawyered up.

6 You know, conversely, Dr. Desai was smart because
7 what happened? He gets charged criminally, you know, and so
8 we know he's charged criminally. We know he had to hire a
9 criminal defense lawyer. And the timing of that I don't see
10 as terribly prejudicial because, you know, Dr. Desai could
11 have seen the handwriting on the wall the way this was going,
12 the sort of frenzy in the media, the rush to judgment.

13 And I think anybody in that situation might have
14 said, gee, you know, I better -- I better get my own lawyer
15 here to protect my interests beyond the partnership and beyond
16 what the civil lawyers -- who, frankly, they don't know beans,
17 in my experience, about criminal law and, you know, may have
18 even advised Dr. Desai and others -- who, by the way, they all
19 had their lawyers, too, who have been sitting in the courtroom
20 for these other physicians, and that's come out. We know Dr.
21 Carrol had -- I don't remember who.

22 MS. WECKERLY: Mr. Kreitlein.

23 THE COURT: Mr. Kreitlein. We know that Vishvinder
24 Sharma had Dominic Gentile.

25 MR. WRIGHT: Of course. They all got immunity.

1 THE COURT: Well, I'm just saying.

2 MR. STAUDAHER: Vishvinder Sharma didn't get
3 immunity.

4 THE COURT: We know that this guy -- well, we
5 haven't heard anything. But we know these other doctors all
6 got prominent criminal defense lawyers to represent their
7 interest.

8 So all I'm saying is I -- I don't see that, oh, he
9 must have known he was guilty when it can just as easily be
10 interpreted, gee, Dr. Desai is a smart man and there is a
11 frenzy in the media and they're out to crucify this clinic.
12 You know, he could think about it that way and, gee, I better
13 just not rely on these corporate people who spend all their
14 time looking at contracts. I better get a real lawyer who
15 knows the ins and outs of -- of a criminal investigation.

16 So I don't see that it -- in summation, I don't see
17 that the question that elicited the testimony about a meeting
18 where corporate counsel and Mr. Wright and Ms. Stanish were
19 present rises to the level of prejudice that justifies the
20 Court declaring a mistrial at this point.

21 MR. WRIGHT: I'm not going to reargue it, just a
22 couple of additional points. R&R was retained by counsel,
23 okay, and they are within the privilege whether I get a CPA, a
24 private investigator, or anything else. I -- I have R&R and
25 Rogich Communications retained for -- by me for clients right

1 now. And it's done frequently, and they are within the
2 privilege.

3 Additionally, I'm -- this is so blindsiding to me
4 because Mr. Carrera is lying about the meeting, okay. There
5 -- there was no discussion at this meeting --

6 MR. STAUDAHER: That's exactly why we think it was
7 with R&R Partners because if it's with his meeting -- I mean,
8 that's where --

9 THE COURT: Well, there was --

10 MR. STAUDAHER: -- we went to.

11 THE COURT: -- only one meeting. Dr. Carrera said
12 that --

13 MR. STAUDAHER: No, no, no.

14 THE COURT: No?

15 MS. WECKERLY: No, there were several.

16 THE COURT: Okay. Wait. Don't gang up on Mr.
17 Wright, number one. And number two, let Mr. Wright continue.
18 But it's obviously the same meeting that Mr. Wright was there
19 because the witness said Mr. Wright and Ms. Stanish were at
20 this meeting.

21 MR. WRIGHT: Right. And we didn't --

22 THE COURT: So it's -- obviously we're all talking
23 about the same meeting. And Mr. -- you know, is representing
24 as an officer of the court at this point that he didn't hear
25 such a comment made is --

1 MR. WRIGHT: I think I was telling them how
2 investigations go. And I said don't discuss, you know,
3 specifics or anything, explaining conflicts. I think Mr.
4 Carrera has Mr. Pitaro because I was telling them lawyers and
5 making recommendations and everything.

6 And there were not discussions like -- of any
7 doctor, not Dr. Desai, not any of the others, because I said,
8 hey, these things get nasty real fast. You know, don't be
9 talking, you know, get your own counsel, and everything else.
10 And so, I mean, I'm flabbergasted to hear that he's contending
11 that, meaning Mr. Carrera. And I would also like to know what
12 else was learned by the State this morning I don't know about.

13 THE COURT: Well, I think at a minimum at this point
14 disclose to Mr. Wright what else was told to you about the
15 meeting.

16 MS. WECKERLY: I mean, that's it, and he can
17 certainly -- you know, if he doesn't trust our
18 representations --

19 MR. WRIGHT: I didn't say that.

20 MS. WECKERLY: -- Mr. Pitaro was present the whole
21 time and he can ask -- you know, if he feels that I was
22 incomplete, he can certainly --

23 MR. WRIGHT: I'm not suggesting that. I mean, is
24 there anything --

25 MS. WECKERLY: No.

1 MR. WRIGHT: -- else? What -- what did Mr. Carrera
2 say that he learned from these documents I've never seen? Do
3 you have any idea?

4 MS. WECKERLY: No.

5 MR. WRIGHT: Okay. Like what the result was when
6 he --

7 MS. WECKERLY: No.

8 MR. WRIGHT: -- saw this?

9 MS. WECKERLY: We don't know.

10 MR. WRIGHT: I mean, because this is new to me, so I
11 thought maybe that came up.

12 MS. WECKERLY: No.

13 MR. WRIGHT: So nothing else new? I didn't mean you
14 were incomplete on that. But, I mean, there isn't some other
15 thing --

16 MS. WECKERLY: No.

17 MR. WRIGHT: -- I don't know about I'm going to step
18 into?

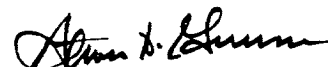
19 THE COURT: All right. Well, I don't know that we
20 need to say anything else at this point about what occurred.
21 I'm sure the State is going to be mindful of their continuing
22 obligation going forward.

23 I will say this, if the statement had been admitted,
24 I don't think the point of the testimony, at least my -- the
25 impression that the Court was left with, which as I've said in

CCPV

Electronically Filed
03/12/2014 02:06:40 PM

TRAN



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

| | | |
|------------------------------|---|----------------------|
| THE STATE OF NEVADA, |) | |
| |) | |
| Plaintiff, |) | CASE NO. C265107-1,2 |
| |) | CASE NO. C283381-1,2 |
| vs. |) | DEPT NO. XXI |
| |) | |
| DIPAK KANTILAL DESAI, RONALD |) | |
| E. LAKEMAN, |) | |
| |) | |
| Defendants. |) | TRANSCRIPT OF |
| |) | PROCEEDING |

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

JURY TRIAL - DAY 20

WEDNESDAY, MAY 22, 2013

APPEARANCES:

| | |
|------------------------|--|
| FOR THE STATE: | MICHAEL V. STAUDAHER, ESQ. PAMELA WECKERLY, ESQ. Chief Deputy District Attorneys |
| FOR DEFENDANT DESAI: | RICHARD A. WRIGHT, ESQ. MARGARET M. STANISH, ESQ. |
| FOR DEFENDANT LAKEMAN: | FREDERICK A. SANTACROCE, ESQ. |

RECORDED BY JANIE OLSEN COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

KARR REPORTING, INC.

I N D E X

WITNESSES FOR THE STATE:

ELADIO CARRERA

| | |
|---------------------------------------|-----|
| Direct Examination By Ms. Weckerly | 12 |
| Cross-Examination By Mr. Wright | 145 |
| Cross-Examination By Mr. Santacroce | 211 |
| Redirect Examination By Ms. Weckerly | 242 |
| Recross Examination By Mr. Santacroce | 250 |

E X H I B I T S

DEFENDANT'S EXHIBITS ADMITTED:

PAGE

| | |
|-----|-----|
| I-1 | 176 |
|-----|-----|

1 LAS VEGAS, NEVADA, WEDNESDAY, MAY 22, 2013, 9:30 A.M.

2 * * * * *

3 (Outside the presence of the jury.)

4 THE COURT: Mr. Wright, you said out of the presence
5 of the jury that you had wanted to make a motion.

6 MR. WRIGHT: Yeah. In the nature of a motion in
7 limine, Dr. Carrera, in my judgment, a great deal of his
8 testimony before the Grand Jury was based upon hearsay or the
9 foundation isn't clear. Dr. Carrera, if he testifies the same
10 way here as he did in the Metro interview statement, his
11 proffer, and part of the Grand Jury, he's extremely vindictive
12 and has a lot of animosity towards Dr. Desai.

13 It seemed to me he went out of his way, even when
14 Scott Mitchell cautioned him this is hearsay, he'd say it
15 anyway. So I'm going to ask the Court to ask the prosecutor
16 to lay the foundation properly on questions on the information
17 he intends to elicit just to cut down on the objections
18 because I --

19 THE COURT: Who will be doing the witness?

20 MS. WECKERLY: I am.

21 THE COURT: I mean, you know, basically sometimes
22 they -- maybe you haven't gotten there, but, you know, did you
23 witness, you know, an argument between Dr. Desai and a nurse
24 anesthetist? Yes, I did. Do you recall when that meeting --

25 MS. WECKERLY: Sure.

1 THE COURT: -- was approximately? Blah. Do you
2 recall where that meeting -- or, you know, where that took
3 place? Here. And where were you in proximity to the, you
4 know, statement? I think that's sufficient for a foundation.

5 MS. WECKERLY: Okay.

6 THE COURT: Obviously, she first has to get out that
7 there was a meeting or a situation or an argument or something
8 like that before she can lay a foundation about it, unless you
9 want her to just lead, you know, directing your attention to
10 May of 2007, did you witness an argument at the clinic? I
11 think you'd prefer if she said did you witness, you know, a
12 confrontation or whatever it's going to be he's testifying
13 about at the clinic. When approximately was that? You know,
14 where did that occur? Who else was present? You know, where
15 were you in relation to what was transpiring if he wasn't
16 directly at the meeting, if he overheard something.

17 Is that sufficient, Mr. Wright?

18 MR. WRIGHT: Yes.

19 THE COURT: I think that would be sufficient. So
20 just, you know, be mindful to do that and we can move through
21 this.

22 Now, I don't know specifically, you know, off the
23 top of my head what testimony you're concerned about that may
24 be hearsay.

25 MR. WRIGHT: Well, the -- it was replete for awhile.

1 I am concerned. He stated he didn't know of any complaints
2 against Dr. Desai on the board at the time of -- before the
3 practice ended, but since he has learned of them.

4 MS. WECKERLY: I'm not -- I'm not planning on asking
5 him.

6 MR. WRIGHT: Okay.

7 THE COURT: Yeah, I mean, just be mindful not to
8 then open the door somehow on cross to get into the complaints
9 if she doesn't get --

10 MS. WECKERLY: Then I might.

11 THE COURT: -- if she doesn't get into it. So just
12 be mindful, you know, how you ask the questions. I'm sure you
13 would be, but since this has come up before, you know, just be
14 mindful on cross.

15 And did Dr. Carrera have any complaints against him?

16 MS. WECKERLY: Not that I'm aware of.

17 THE COURT: Okay.

18 MS. WECKERLY: But, I mean, I haven't looked.

19 THE COURT: Right. I mean, I'm just saying if he
20 said, oh, I was so great and all the patients loved me and --

21 MS. WECKERLY: I don't --

22 THE COURT: -- everything like that --

23 MS. WECKERLY: Yeah, I'm not --

24 THE COURT: -- that would --

25 MS. WECKERLY: -- really asking that.

1 THE COURT: Yeah, that --

2 MR. WRIGHT: Dr. Carrera was suspended for a year
3 and a half.

4 THE COURT: Oh, okay.

5 MS. WECKERLY: As a result of this.

6 MR. WRIGHT: Right.

7 THE COURT: Okay.

8 MR. WRIGHT: Right.

9 THE COURT: So, I mean, like I said, Ms. Weckerly is
10 going to be mindful to lay a foundation.

11 MS. WECKERLY: Right.

12 THE COURT: And, you know, if I sustain an objection
13 and he starts answering the question, then I'll just say to
14 him, Dr. Carrera, you need to not answer any questions to
15 which an objection has been sustained. And, you know --

16 MR. WRIGHT: An additional matter, at some point I'd
17 like the Court to ask the jury if they've heard any news or
18 read any stories. There were stories again in the paper
19 today. There's story every day.

20 THE COURT: There are stories in the paper every
21 day. We've fallen off the TV news. I haven't seen anything
22 for --

23 MR. WRIGHT: There was a column of John L. --

24 THE COURT: John L. Smith about the --

25 MR. WRIGHT: -- Smith's this morning. I would like

1 to know if the jury has read or heard anything about the case.

2 THE COURT: Well, I mean, to me, we tell them every
3 day don't read or listen or watch anything about the case.

4 MR. WRIGHT: Right. But we don't know if they have
5 or haven't. I mean in a polite way. I mean, just say this is
6 a high profile case.

7 THE COURT: I'll remind them --

8 MR. WRIGHT: Have all of you --

9 THE COURT: -- again.

10 MR. WRIGHT: Have any of you read or heard anything
11 about the case is all I want the answer to.

12 THE COURT: Well, I don't --

13 MR. WRIGHT: I don't see favorable stories in there,
14 and I ---

15 THE COURT: I haven't seen any favorable stories,
16 either.

17 MS. WECKERLY: I don't mind if the Court admonishes
18 them again, but I don't --

19 THE COURT: I'm concerned --

20 MS. WECKERLY: -- like to say, hey, there's stuff
21 out there. It just seems like you're inviting trouble.

22 MR. WRIGHT: I don't know any way to find out
23 whether or not they have been tainted, if one of them read it
24 or someone discussed it --

25 THE COURT: Well --

1 MR. WRIGHT: -- or said something.

2 THE COURT: -- why today? Because, I mean, I don't
3 think there's anything. Every single day there has been
4 reporting in the RJ, except for maybe Sunday. But every day
5 after court there has been articles in the RJ. So why today
6 do we want to all of the sudden highlight that there have been
7 articles in the RJ?

8 MR. WRIGHT: I said I didn't want to highlight it.

9 THE COURT: Okay.

10 MR. WRIGHT: It's just we're a couple of weeks into
11 it, and it highlighted to me because I picked up the paper and
12 saw it again. And so I thought, God, I hope the jury is not
13 -- none of them have read or heard about this. And -- and --

14 THE COURT: Yeah.

15 MR. WRIGHT: -- the only way I can know that is to
16 inquire and just get an assurance from them that they have
17 been following the Court's admonition. That's all I'm
18 requesting.

19 THE COURT: Okay. I mean, what I don't want to do
20 is now open up like a new jury -- you know what I mean --
21 selection about reading the media and everything like that. I
22 mean, I agree, they're not supposed to read the articles. We
23 need to make sure they're following the admonition.

24 What we've seen so far from the jurors, the two --
25 you know, the juror who reported the misconduct, and then the

1 juror who was contacted on Facebook and ended the
2 conversation. I mean, what we've seen since we got rid of the
3 sort of problematic juror, is we've seen good juror conduct.
4 They're following the rules. They're, you know, advising the
5 bailiff. You know, the juror acted appropriately when she was
6 contacted on Facebook about the case and ended the
7 conversation.

8 So, you know, there has been nothing to suggest that
9 they're not mindful, especially since we had that last -- when
10 we excused the other juror. So we can do that at some point.
11 I'll certainly remind them, you know, again, you can't read
12 the news, you can't read anything about this. But, you know,
13 I don't want to get into like a new, you know, bring them all
14 in one by one and --

15 MR. WRIGHT: I'm not --

16 THE COURT: -- get into a new --

17 MR. WRIGHT: -- suggesting that.

18 THE COURT: -- kind of jury selection. What -- what
19 do you want me to do? What are you suggesting?

20 MR. WRIGHT: I'm suggesting of the panel, when
21 they --

22 THE COURT: By a show --

23 MR. WRIGHT: At the --

24 THE COURT: -- of hands, has --

25 MR. WRIGHT: At the end -- no. At the end of one of

1 the recesses when you normally admonish them.

2 THE COURT: Right.

3 MR. WRIGHT: Say have all of you adhered to this and
4 have you all not read any stories? I mean, you just work it
5 in at the time you're admonishing. If one of them has and
6 says yeah, then I would want to question that particular
7 juror. But I -- I read the story, so I thought of it. It's
8 not --

9 THE COURT: Okay. Well, here is what --

10 MR. WRIGHT: -- it's not every case that has the
11 publicity.

12 THE COURT: I understand that. Here's what we can
13 do. Remind them of the admonition and just tell them -- I
14 don't want a public display if someone has inadvertently read
15 something in front of the other jurors. They might feel shy
16 about that. I will say, you know, if anyone has
17 inadvertently, you know, read something or someone has tried
18 to contact you and talk about the case in any way, just notify
19 the bailiff, and then he can tell me, and then we can bring
20 that person in individually. Is that satisfactory?

21 MR. WRIGHT: Yes.

22 THE COURT: Is that fine with the State?

23 MS. WECKERLY: I don't think it's necessary, but
24 I'll submit it to the Court.

25 THE COURT: Yeah. I mean, like I said, everything

1 -- every indicator has been that they're following the Court's
2 directives and are conscientious about doing so. So I'm --

3 MR. WRIGHT: I'm worried about the one that -- read
4 something and didn't report it to the others, and the only way
5 I could know that is by asking.

6 THE COURT: All right. Well --
7 Are they all here?

8 THE MARSHAL: Yes.

9 THE COURT: All right. Bring them in.
10 Is Dr. Carrera our first witness?

11 MS. WECKERLY: Yeah. He's --

12 MR. STAUDAHER: He's the only witness.

13 MS. WECKERLY: -- the only witness.

14 THE COURT: Oh. And I'm assuming he's Mr. Pitaro's
15 client?

16 MS. WECKERLY: He is.

17 (In the presence of the jury.)

18 THE COURT: All right. Court is now back in
19 session. The record should reflect -- everyone can be seated
20 -- the presence of the State through the Deputy District
21 Attorneys, the presence of the defendants and their counsel,
22 the officers of the court, and the ladies and gentlemen of the
23 jury.

24 And the State may call its next witness.

25 MS. WECKERLY: The State calls Eladio Carrera.

1 THE COURT: Right up here, please, next to me. And
2 then just up those couple of stairs there. And please remain
3 standing facing this lady right here who will administer the
4 oath to you.

5 ELADIO CARRERA, STATE'S WITNESS, SWORN

6 THE CLERK: Thank you. Please be seated.

7 THE WITNESS: Thank you.

8 THE CLERK: And would you please state and spell
9 your name.

10 THE WITNESS: Eladio, E-L-A-D-I-O, Carrera,
11 C-A-R-R-E-R-A.

12 THE COURT: Thank you.

13 Ms. Weckerly.

14 DIRECT EXAMINATION

15 BY MS. WECKERLY:

16 Q Good morning, sir. How are you employed?

17 A I'm a medical doctor.

18 Q And can you explain to us your educational
19 background?

20 A Yes. How far back do you want me to take
21 that?

22 Q How about college.

23 A College. Okay. I attended the University of
24 Texas at Austin in Austin, Texas. I started in 1972, received
25 a BA in zoology. In 1976 thereafter I attended Southwestern

1 Medical School in Dallas, Texas. I started there in 1976 and
2 ended in 1980. I did a one-year residency in internal
3 medicine at St. Paul Medical Center in Dallas, Texas, in '80
4 and '81. I did a two-year residency in internal medicine at
5 St. Paul Medical Center in Dallas, Texas, in '82, '83 -- I'm
6 sorry, '82, '83, '84, '85. In 1985 I did a -- I started a
7 fellowship in gastroenterology at Maricopa Medical Center in
8 Phoenix, Arizona. In 1983 I did my -- started my fellowship
9 in Phoenix, Arizona, and finished there in 1985. 1985 I came
10 to Las Vegas and started private practice.

11 Q And when you came to Las Vegas in 1985, what
12 was the nature of your practice?

13 A I was practicing gastroenterology. I was
14 employed by Physicians Medical Center on Maryland Parkway.

15 Q And who was in that group with you?

16 A Dr. Saul Sobol was the head of Physicians
17 Medical Center and I was affiliated with Dr. Frank Nemec who
18 was the gastroenterologist for the group.

19 Q How long did you stay with that group?

20 A Until about 1988.

21 Q And what happened in 1988?

22 A In 1988 I joined Gastroenterology Center of
23 Nevada.

24 Q What were the -- was that with Dr. Desai?

25 A Yes, Dr. Desai.

1 Q How was it that you first met Dr. Desai?

2 A I believe it was at a restaurant on Flamingo
3 named Paul Bella, which is an Indian Restaurant. And I had
4 gone there for dinner and the waiter informed me that someone
5 had paid for my dinner, and I asked who and he pointed out Dr.
6 Desai. And I went over and said thank you. And I believe
7 that was my first meeting with him.

8 Q What were your initial conversations with Dr.
9 Desai about joining the practice?

10 A That went through Dr. Nemec. Dr. Nemec had
11 left Physicians Medical Center in, I believe, 1987 or so. And
12 later I was contacted by Dr. Nemec and invited to come look at
13 the practice and perhaps consider joining him and Dr. Desai in
14 practice.

15 Q And so your decision or your discussions about
16 the practice when you initially joined were with Dr. Frank
17 Nemec?

18 A Primarily with Dr. Frank Nemec, yes.

19 Q And at some point you made the decision to
20 join the practice; is that right?

21 A Correct.

22 Q And I think you said that was in 1988?

23 A '88, I believe. Yes.

24 Q And where was the practice located at that
25 time?

1 A Shadow Lane.

2 Q 700 Shadow Lane?

3 A 700 Shadow Lane. Yes.

4 Q Who were the doctors at that time in 1988?

5 A Frank Nemec and Dipak Desai.

6 Q And yourself at some point.

7 A And me.

8 Q Okay. And it was a gastroenterology practice?

9 A Yes, it was.

10 Q Was there a medicine side as well as a

11 procedure side?

12 A That is part and parcel of the specialty. We

13 practice medicine in a sense of doing consultations and follow

14 up care, prescribing medications, ordering tests done by other

15 specialists, for example x-rays to be done by a radiologist.

16 We also do endoscopic exams, endoscopy procedures,

17 endoscopies, colonoscopies, other similar type exams.

18 Q And that -- all of that was going on when you

19 first joined the practice in 1988?

20 A Yes.

21 Q During that time period do you recall how --

22 how you were paid or how the partnership shared the profits?

23 A I was a salaried employee.

24 Q So you weren't a partner at that time?

25 A No, I was not.

1 Q At some point did the partnership and the
2 practice change or did other members leave or come in?

3 A Yes, I became a partner in about 1990 or so.
4 After I joined there were several other individuals that
5 joined the practice. A couple of them stayed only a short
6 period of time. Dr. Neil Shernoff who came from Arizona, but
7 subsequently returned there. Dr. Vinod Singh, I believe was
8 his name, who stayed a short period of time but then
9 eventually went to Arizona to practice also. There was one
10 other doctor. I don't recall his name. The next people to
11 come onboard would have been Dr. Vish Sharma, Dr. Clifford
12 Carrol, and Dr. Frank Faris.

13 Q And when -- when did they come on
14 approximately?

15 A I can't tell you the exact date, but I would
16 say maybe 1982, '83, somewhere thereabouts, '84.

17 Q And do you mean '94?

18 A I'm sorry. '94.

19 Q Okay. Because '88 is when you started.

20 A Yeah, I got you. Yeah. I'm sorry.

21 Q When they -- when they come on you were
22 already a partner?

23 A Yes, I was already a partner when Dr. Sharma,
24 Dr. Carrol, and Dr. Faris come onboard. And that would have
25 been correct, in the early 1990s.

1 Q Okay. And at that time when those doctors
2 come on, what -- how are the -- how are the profits of the
3 partnership divided?

4 A There was a formula in place, and I received a
5 certain percentage, but it wasn't equal to Dr. Desai or to Dr.
6 Nemec. It was less.

7 Q And --

8 A Dr. Nemec did leave. So it wasn't an equal
9 partnership initially and not even later, so --

10 Q At that time when Dr. Nemec was there and Dr.
11 Desai was there and then the other doctors that you just
12 mentioned, Faris and Carrol --

13 A Yeah, I think they came after Nemec left the
14 practice, of course, but --

15 Q Okay. So at some point Dr. Nemec leaves, and
16 then it's yourself, Dr. Desai, Dr. Carrol, Dr. Faris.

17 A Sharma.

18 Q Sharma.

19 A Yes.

20 Q And anyone else?

21 A There were other doctors that came onboard
22 later, that included Dr. Mason, Albert Mason, Dr. Carmelo
23 Herrero, and subsequent to that Dr. Rana Mukherjee, Dr.
24 Nayyar. And then at another junction Dr. Tony Decarli who
25 stayed a period of time, but didn't stay terribly long. He

1 moved to Florida. Dr. Banker, Dr. Weisz joined the group.

2 Q And when you had -- that sounds like about 15
3 or so --

4 A Roughly about 15 providers, and by providers I
5 mean physicians. And there were a couple of physician's
6 assistants, also.

7 Q Okay. Were all of the physicians partners?

8 A There was always track, and when the practice
9 folded, as far as I know everyone was a partner, Dr. Nayyar,
10 Dr. Mukherjee, Dr. Wahid had become partners, and of course
11 everybody who preceded them in the practice was a partner.

12 Q And at that time amongst the partners, how was
13 money or profits allocated? How were they allocated?

14 A There was a partnership agreement wherein Dr.
15 Desai received a certain percentage, which I believe was in
16 the neighborhood of about 20 percent of the profits of the
17 gastroenterology center of Nevada. The other partners
18 received about 10 percent. I received 6.4 percent.

19 Q And do you know why your percentage was lower?

20 A It had been equal to the other partners. Dr.
21 Desai always had a preferential share, but it had been equal
22 to other partners up until about 2006. At that point Dr.
23 Desai told me that it would be in my best interest if I didn't
24 go to the hospitals to -- and didn't take night call. And
25 primarily I think that was because of the work load, actually,

1 and as a consequence of not taking on that responsibility that
2 prior to that time I had been required to take my compensation
3 was diminished.

4 Q And did -- that was a conversation you had
5 with Dr. Desai?

6 A Yes, that is correct.

7 Q And so your -- your share went from 10 to
8 6.4 --

9 A Point four percent.

10 Q -- percent?

11 A Right.

12 Q And that was about the --

13 A Initially he wanted to -- he wanted a 6
14 percent distribution, but I negotiated it up to 6.4 percent.

15 Q And this was in two thousand --

16 A 2006, I believe. Yes.

17 Q When he told you that or when you had that
18 discussion -- well, actually, let me ask you. Was there a
19 discussion about that or how did that conversation go?

20 A Well, it was mostly a one-sided conversation,
21 and mostly it was telling me that that's the way things were
22 going to be.

23 Q Did you feel that you had any recourse, you
24 know, if you didn't agree with that -- that decision?

25 A Well, I did manage to up his offer from 6

1 percent to 6.4 percent, but I felt it was very limited -- they
2 were very limited options. I did talk to Alan Sklar who was
3 the corporate attorney for the group, and Alan's only
4 suggestion was, well, you can always go and leave.

5 Q And in your commitment to the practice, had
6 you -- had you signed a contract?

7 A Yes, I had signed a contract. Everyone was
8 under contract.

9 Q And in that contract did you have any kind of
10 non-competition clause?

11 A Yes, there was an exclusionary covenant and
12 there were two different ones. One had to do with the
13 Gastroenterology Center contract -- of Nevada contract, and
14 that was an exclusionary covenant or non-compete clause that
15 was in place for three years in a 25 mile radius, if I recall
16 correctly, from the principal office you worked at. For me,
17 that would have been the Shadow Lane address. On the
18 Endoscopy contract there was a clause that stated that you
19 could not practice in any other endoscopy facility for a
20 period of time, and I don't recall the specific details of
21 that.

22 Q So did you feel like leaving was an option?

23 A No, I did not. In 2006 they lifted the
24 exclusionary covenant from my Gastro contract, but not from
25 the Endoscopy contract, which I suppose it was all a matter of

1 interpretation. But the way I looked at it was, well, good, I
2 could go practice elsewhere, but I wouldn't be able to do
3 endoscopy, which is the mainstay of gastroenterology, of any
4 gastroenterology practice.

5 Additionally, I would have had to compete against
6 the group for -- to be allowed as a provider on various
7 insurance plans. And at the time, the group was very well
8 entrenched and very competitive in terms of controlling who
9 got business from various insurers or various entities.

10 Q So, I mean, was it your feeling that if you
11 left you probably wouldn't be able to make a lot of money?

12 A I would have liked to just make a living, but
13 I thought that would have been difficult.

14 Q So in 2006 your -- your share diminishes. At
15 that time period, what -- what was the leadership structure
16 within the partnership?

17 A The --

18 MR. WRIGHT: Is this 2006?

19 MS. WECKERLY: Yes. Yes, I'm sorry.

20 BY MS. WECKERLY:

21 Q 2006, if I didn't say that.

22 A Yes, the -- the CEO was Dr. Desai, as had been
23 my experience all along, and that remained unchanged.

24 Q And did Dr. Carrol have a title or a position
25 at that time?

1 A Dr. Carrol had a title at the endoscopy center
2 as the non-operations manager.

3 Q And as the non-operations manager, what were
4 your observations of his role or responsibility?

5 A His responsibility was to work there like
6 everybody else did, and I don't know that he had much of a
7 managerial role. I don't think he had any at all, really.

8 Q Now, you -- you've mentioned the different
9 entities that were in the partnership.

10 A Uh-huh.

11 Q Can you just go through and explain the -- the
12 entity that was at Shadow Lane versus the other facilities?
13 Actually, there's two at Shadow; correct?

14 A Yes, there were various entities. There was
15 Gastroenterology Center of Nevada. Now, that was the medical
16 side of the practice and that had offices at Shadow Lane, on
17 Burnham, on Rainbow and Oquendo, and there was a Henderson
18 office.

19 Q And all of the partners would have been --

20 A Been partners in Gastroenterology --

21 Q -- in that --

22 A -- Center of Nevada.

23 Q --- in that entity?

24 A The Endoscopy Center of Southern Nevada was at
25 Shadow Lane. The Endoscopy of Southern Nevada II was on

1 Burnham. And there was a facility, and I don't know the exact
2 name of it, that was on Rainbow and Oquendo.

3 Q Okay. And so as a partner, the medical
4 offices, which I think you said there were four medical --

5 A Uh-huh.

6 Q -- offices or four locations for that entity,
7 the medicine entity; is that correct?

8 A For Gastroenterology Center, yes.

9 Q And all of the partners, Desai had a greater
10 share, but all of the partners had a -- had a share in that?

11 A Yes, that is correct.

12 Q And is that where you had the 6.4 percent?

13 A That is correct.

14 Q Okay. And then there was a procedure facility
15 at Shadow Lane, as well?

16 A Yes, that is correct.

17 Q And that's -- that was called the Endoscopy
18 Center --

19 A Uh-huh.

20 Q -- Southern Nevada? Is that yes?

21 A Yes.

22 Q Okay. Did you -- did you have a share in
23 that, or how did the --

24 A Yes.

25 Q -- profits from that --

1 A There were 110 ownership units, and I owned 13
2 of them.

3 Q Okay. And do you know who owned the other --

4 A Dr. Carrol owned a number of units. Dr.
5 Herrero and Mason up until late 2007 were owners, and Dr.
6 Mukherjee and Dr. Wahid were owners at the beginning of 2008.
7 Dr. Faris was an owner of a certain number of units, and I
8 don't know the details on any of them. Dr. Weisz, I believe,
9 also had a proprietary interest, an ownership interest.

10 Q And were the profits from --

11 A And then, of course, Dr. Desai owned the
12 majority of it.

13 Q And do you know how many units he had?

14 A I'd have to guess it was about two --
15 somewhere between 50 and 60 percent of the total. I don't
16 know exactly.

17 Q But he would solely own and then everybody
18 else had bearing shares --

19 A Right.

20 Q -- of the 40?

21 A And these were not transfer -- this was not a
22 transferable asset because there was a clause in the contract
23 that said that Dr. Desai could redeem your ownership interest
24 at any time, and there was a set formula where for whatever
25 odd reason, and there didn't have to be any specific condition

1 met, he could just outright purchase your units and the
2 ownership would redirect to him. So it wasn't like you could
3 market this and sell it to somebody else. It just -- you had
4 a share of the profits and losses.

5 Q And these were the profits from the procedure
6 side --

7 A Yes, that is correct.

8 Q -- at Shadow? Now, there was also a procedure
9 facility at Burnham; correct?

10 A Uh-huh.

11 Q Is that yes?

12 A Yes, Burnham.

13 Q Sorry to keep making you say yes. It's just
14 we're recording and uh-huh, huh-uh --

15 A I understand.

16 Q Okay. So at -- at the Burnham -- the Burnham
17 procedure side, not the medicine side which we've discussed,
18 how -- did you have any shares in the Burnham procedure?

19 A I did up until about 2005, and it was a very
20 small percentage, maybe in the neighborhood of two or three
21 percent. That ended in about 2005, 2006, because my ownership
22 interest was redeemed by Dr. Sharma at that time, and that was
23 part of the clause as I stated before. These were not
24 transferable assets and were subject to redemption, and that's
25 what occurred there.

1 Q Okay. And so Dr. Sharma was able to redeem
2 your interest?

3 A Yes, that is correct.

4 Q And was that like an agreement that you had
5 with him?

6 A No, it was unilateral on his -- his end.

7 Q Okay. And so did you have a discussion with
8 him about it, or that just occurred?

9 A I tried to talk to Dr. Desai about it, but I
10 didn't get very much information and it just occurred.

11 Q Well, tell me about the conversation that you
12 had with Dr. Desai about your Burnham shares.

13 A I don't recall any of the specific details. I
14 basically just wanted an explanation of why this was happening
15 and didn't get much of an explanation to the best of my
16 recollection.

17 Q And can you give us the approximate time frame
18 or year when this occurred?

19 A Probably the end of 2005, beginning of 2006.

20 Q Now, there was another medical office in
21 Henderson?

22 A Yes.

23 Q Did that have a procedure component, as well?

24 A Not that I'm aware of.

25 Q Okay. And then there was one other medical

1 office right on Rainbow?

2 A Rainbow and Oquendo.

3 Q And did that have a procedure aspect to it?

4 A Yes, there was.

5 Q Did you have any shares in that?

6 A No. Zero.

7 Q So your -- by 2006 your income was derived
8 from the procedure side and the -- the big medical?

9 A Yes, from the medical side, and that was
10 Gastroenterology Center of Nevada, and, yes, from the
11 Endoscopy Center of Southern Nevada on Shadow Lane.

12 Q But only the Shadow?

13 A Yes, that is correct.

14 Q Now, as -- as a doctor specializing in
15 gastroenterology, can you just give us an overall -- like what
16 -- what is that? What is the study of gastroenterology?

17 A It is the evaluation and treatment of diseases
18 of the digestive system.

19 Q And in the -- in the course of that you
20 conduct colonoscopies, as well as upper endoscopy procedures?

21 A Yes, upper endoscopies, or
22 esophagogastroduodenoscopies as they are also known, and
23 colonoscopies, that is correct.

24 Q Now, as -- can you describe the process that
25 you as the doctor go through when you perform a colonoscopy?

1 A Well, initially there is a patient
2 consultation, and we assess whether the procedure is actually
3 needed or not. If it is indicated, we discuss how to prepare
4 for the procedure, what to expect, what we're looking for,
5 discuss certain mechanical aspects of it and certain
6 requirements such as the patient having to have someone to
7 pick them up after the procedure and drive them back home, and
8 they must rest the remainder of the day.

9 The actual procedure itself, the patient is brought
10 to an endoscopy facility. They can be out ambulatory surgery
11 centers, outpatient setting, or they can be a hospital, either
12 inpatient or outpatient status at the hospital. Usually there
13 is -- well, there is always a consent obtained. There is an
14 intravenous access of some type obtained, be it a saline flush
15 or saline lock or a heparin lock or even an IV bag with fluid
16 running through it.

17 The patient is taken to the -- to the exam room.
18 The -- there are vital sign monitors attached to the patient.
19 Sometimes they will come with a patient from preoperative area
20 back to the exam room, sometimes they're actually done in the
21 exam room. And then the patient is sedated; the procedure is
22 performed.

23 Q And you perform that procedure with a special
24 scope for that type of procedure?

25 A Yes.

1 Q What does the scope do? How does -- how does
2 that work for the doctor in the procedure?

3 A Well, it allows us to visualize the inside of
4 the body in the sense of an endoscopy or
5 esophagogastroduodenoscopy, we can look at the esophagus and
6 stomach and duodenum. In the case of a colonoscopy we can
7 look at the large bowel, the interior surfaces.

8 Q And -- and the scope itself has like a camera
9 or something on the end?

10 A Yes, it's got a video chip, and that allows
11 the images to be transmitted through the instrument itself to
12 a processor, which is a computer processor, and that
13 eventually leads to an image that is projected onto a screen
14 that we're able to look at.

15 Q And when you're -- you're the doctor
16 performing one of these procedures, what are -- what are you
17 physically looking at in order to -- to do the procedure and
18 make your assessment?

19 A During the exam itself I am looking at the
20 screen for the most part, at the scope eventually, from time
21 to time I should say, at the patient from time to time just to
22 see how they look, and at the vital signs monitor to see what
23 the heart rate is doing, see what the oxygen saturation is
24 doing.

25 Q Okay. Now, in terms of a colonoscopy, I

1 assume some of them are just like a check up because of the
2 person's age or possible, you know, medical issues. There may
3 not be a problem, is that fair?

4 A That is absolutely correct.

5 Q And in those instances, is it just a visual
6 exam, obviously internally, of the patient?

7 A If there are no identified issues, all we do
8 is a visual inspection.

9 Q Okay. What are the -- what are the other
10 things besides just a normal visual exam that might come to
11 your attention during a colonoscopy?

12 A Ulcers or inflammatory change, and we might
13 take a biopsy then, tumors, which we would almost always
14 biopsy. Sometimes we inject tumors with India ink to mark
15 them so that anticipating surgery, when the surgeon does go
16 in, he's got a place in the bowel to look for specifically,
17 and that's where the ink tattoo would have been applied to the
18 bowel. If there are polyps we might be able to remove them
19 with a snare right at the time of the procedure.

20 Q Okay. And if you're taking a biopsy, how do
21 you -- how do you do that?

22 A You take a forcep, which is a long, flexible
23 instrument with a little pincher cup at the end of it, and you
24 pass it through the channel. There's a built in biopsy
25 channel in the scope and you pass it through there and

1 approach the lesion, or at an ulcer or a tumor, and then with
2 the little pincher at the end of it take tissue samples and
3 pull it out. And then it's submitted to lab for --

4 Q For further --

5 A -- for analysis.

6 Q Now, you mentioned that there might be a polyp
7 that you would just remove?

8 A Yes.

9 Q How is that done?

10 A You place an instrument called -- well,
11 there's two ways depending on the size of the polyps. If
12 they're very small polyps, you would use what's called a hot
13 biopsy forcep. It's similar to the cold biopsy forcep that I
14 just described, but the difference is that you can actually
15 apply an electrical current through this. So you actually
16 take the polyp, grasp it within the jaws of the forcep, pass a
17 bit of electrical current through there, and in one step
18 you're able to biopsy, but also to eradicate the lesion.

19 With larger polyps, one would place a snare, which
20 is a long, thin, plastic tube that has a wire mechanism within
21 it. When you are in position, you withdraw the wire to form
22 something akin to a lasso that is passed around the base of
23 the polyp. The polyp is attached to an electrocautery unit,
24 meaning you can pass electrical current through there and that
25 snips it off and cauterizes the stump of the polyp so that it

1 lessens the risk of bleeding.

2 Q And what is a polyp? What is it consisting
3 of?

4 A It's a tumor, but not necessarily a malignant
5 tumor, that occurs in the colon. And they -- the reason we
6 screen for those and remove them is that in time they can lead
7 to colon cancer, and our hope is to lessen the risk of a colon
8 cancer developing.

9 Q So that's why you remove them?

10 A Yes, that is correct.

11 Q Now, in the case of an upper esophagus exam --

12 A Uh-huh.

13 Q -- what are you looking for in that procedure?

14 A Looking for -- let's, for example, say you
15 have a person who has heartburn. You would look for
16 inflammatory change within the esophagus. If it's long
17 standing hearting burn you would look for pre-cancer change
18 called Barrett esophagus, a change in cells. There are some
19 visible signs that tell you that might be the case, and
20 certainly biopsy tells you if you have that condition or not.

21 There may be ulcers, there may be an obstruction of
22 the esophagus, such as an area of scar tissue, a stricture or
23 a web, a Schatski ring. There may be a foreign body
24 obstructed in the -- obstructing the esophagus. In that
25 circumstance you would try to remove it. In the stomach there

1 may be gastritis or inflammation, there may be ulcers. We
2 would certainly biopsy those.

3 There may be a tumor in any area. That would
4 certainly be something we would biopsy. The small intestine
5 you might find ulcers or inflammation. Sometimes we just do
6 biopsies to look for microscopic changes. Certainly patients
7 who we think might have celiac disease or who might be
8 sensitive to gluten, we would look for microscopic change by
9 taking a biopsy.

10 If the patient were bleeding, we could -- and
11 frequently patients do come in bleeding from ulcers or other
12 things. There's a possibility we could inject with medication
13 to stop bleeding or lessen the bleeding, or we could cauterize
14 any bleeding vessel. So that is something we might be able to
15 do.

16 Q Do you use those same tools, the forceps and
17 snares, in the upper endoscopy as you do in the lower one? I
18 mean, not the exact same ones, but the same equipment?

19 A It is the same type of equipment. In other
20 words, the snares and biopsy forceps are fairly universal, so
21 you can use them both in either an upper or a lower endoscopy
22 case.

23 Q How about -- how about the scope? Are
24 different scopes used?

25 A Yes, the scopes are different.

1 Q And is that because of size or --

2 A Size is the major difference. The upper
3 endoscope is thinner in caliber, smaller around, and is
4 shorter.

5 Q And in a -- in a colonoscopy, what is the
6 range of time that it takes to -- to do that procedure
7 barring, you know, something extraordinary when you find --

8 A That's variable, and there are, you know,
9 multiple factors that go into that. Primarily it's dependent
10 on the anatomy of the patient's bowel and just the
11 configuration. Some bowels are much more convoluted than
12 others and it's more difficult to do the exam, and sometimes
13 based on the adequacy of the bowel preparation. If the bowel
14 isn't entirely clean, it makes the procedure a little bit
15 longer, a little bit more difficult to do. Time frame, I
16 would say somewhere in the neighborhood of about 20 minutes or
17 so.

18 Q And what about for the upper?

19 A In about 10 minutes or so.

20 Q It's quite a bit shorter?

21 A Yes, it is.

22 Q And you don't have the prep issues and all of
23 that with the --

24 A Generally not. Sometimes there is fluid or
25 certain conditions that'll cause fluid to remain in the

1 stomach, and that renders it a little bit more difficult. And
2 other times people will have collections of food stuff that
3 occur called bezoars over time. That makes it a little bit
4 more difficult.

5 Q During both of these procedures, is the
6 patient sedated?

7 A Yes, the patient is sedated.

8 Q And at the endoscopy center where you worked
9 in 2006, the sedation -- who did the sedation for the
10 procedures?

11 A The CRNAs did.

12 Q And do you recall approximately how many CRNAs
13 were working there in 2006?

14 A At the Shadow Lane facility there was Mr.
15 Lakeman, there was Mr. Mathahs, there was Ms. Hubbard, there
16 was Mr. Mione, M-I-O-N-E. Occasionally others would work
17 there, but it was primarily those four individuals.

18 Q And you only would have one of them doing a
19 procedure?

20 A Yes.

21 Q Do you know anything about the training that
22 CRNAs have?

23 A A CRNA has an advanced nursing degree. And
24 they, as far as I know, and I am not a nurse, they go to
25 nursing school and then they do additional training in their

1 -- their chosen area of specialty. For example, a nurse
2 practitioner would do additional training and be certified or
3 -- or graduate and be certified as a nurse practitioner. A
4 CRNA would do some anesthesia training and eventually become a
5 certified registered nurse anesthetist.

6 Q And in -- in either of those procedures, what
7 is the role of the CRNA or a person providing anesthesia
8 during a colonoscopy or an endoscopy?

9 A Well, their primary goal is assure patient
10 safety, to administer sedative medications, to maintain an
11 appropriate level of sedation for comfort and safety of the
12 patient, and to monitor the patient's vital signs. And that's
13 critically important. They particularly watch for evidence of
14 suppression of respiratory drive due to the medications that
15 are administered.

16 Q During the procedures is there a procedure
17 nurse in the room, as well?

18 A There is a nurse, yes, who keeps a record, and
19 there's also a technician in the room.

20 Q What is the -- when you say the nurse keeps a
21 record, do you know what record they -- what they're
22 recording, I guess, is a better question.

23 A They are keeping a nursing record, and in
24 part, I think, they monitor vital signs also.

25 Q And you said there was a technician, as well?

1 A Yes, and he assists the doctor doing the
2 procedure.

3 Q How -- how does the technician assist you?
4 What does that person do physically?

5 A Well, there's various ways. If I need an
6 extra hand to stabilize the scope, so, for example, like when
7 you remove a polyp. The bowel is very active. It pushes
8 things to and fro, but if I needed an extra hand they would
9 hold a scope in position. Sometimes it's difficult to pass an
10 instrument, an application of pressure with the flat of the
11 hand to the patient's abdomen. It changes the orientation of
12 the bowel and the scope a bit, and that helps to facilitate
13 passage of the instrument and a technician would do that.

14 They will hand you biopsy forceps or snares or
15 whatever materials you might need. If the bowel prep is not
16 great, the lens of the instrument is obscured by -- by bowel
17 or stomach content, then they can actually take a syringe and
18 flush the material away from the tip of the scope right
19 through the scope channel. So there's various ways that they
20 assist.

21 Q When the procedure is done --

22 A Uh-huh.

23 Q -- and the scope --

24 A Yes.

25 Q -- has been removed from the patient, what

1 happens to that actual scope?

2 A The scope is taken by the technician to the
3 cleaning area. Usually it's a room that's dedicated to
4 cleaning equipment, and they have various procedures for
5 cleaning and sterilizing equipment.

6 Q And as the doctor, how do you get the next
7 scope for your next procedure?

8 A Oh, it's brought out by the technician.

9 Q Okay. Another technician, or maybe even the
10 same one comes back with a different one?

11 A Yes, any technician. Yes.

12 Q Now, the -- the anesthesia that's administered
13 to a patient during both of those procedures, that's through
14 an IV or through a heplock?

15 A It's intravenous, so through an IV.

16 Q At the endoscopy center in 2006 and 2007, how
17 were the IVs administered or placed on the patients?

18 A There was a preoperative area, and generally
19 the intravenous access -- it was usually a saline flush, which
20 is a little catheter that's placed into the vein. It's got a
21 cap on the end of it, and that was placed in the preoperative
22 area. And then the patient was brought out and prepared for
23 the procedure.

24 Q Did you ever have a patient come into a
25 procedure room without the IV already in them?

1 A Yes.

2 Q And what happened in those instances?

3 A The CRNA would start the IV.

4 Q In your -- in your years working for the
5 practice, were CRNAs always used? Like when you joined the
6 practice in 1988, did the practice use CRNAs?

7 A There was a predecessor facility to the
8 Endoscopy Center of Southern Nevada called the Endoscopy
9 Center of Nevada. And early on anesthesiologists were coming
10 in and providing the anesthesia services, the sedation. Later
11 on at some point that -- they -- the CRNAs took that role.

12 Q When -- when the endoscopy center was using
13 the anesthesiologists --

14 A Uh-huh.

15 Q -- who was responsible for bringing the -- the
16 sedative or the sedation?

17 A I think it happened in two different ways. I
18 think the clinic did supply it at times, and at times the
19 anesthesiologist would bring his or her own materials with
20 them.

21 Q During that time period did you ever have any
22 conversations or hear Dr. Desai talk about that issue?

23 A Yes.

24 Q And what did he say about it?

25 A He -- he mentioned that the anesthesiologists

1 would be bringing their own propofol. And so that did occur
2 on -- at least on some level, on some -- to some degree.

3 Q Did he say why they would bring their own
4 propofol?

5 MR. WRIGHT: Foundation.

6 BY MS. WECKERLY:

7 Q Okay. This is the -- if I am understanding
8 you, this is the early period at the endoscopy center while
9 you were using anesthesiologists?

10 A Yes, that's correct.

11 Q And what -- what years would those have been?

12 A I believe the center -- and I'm not clear
13 exactly on the dates, but I believe Endoscopy Center of
14 Southern Nevada was started in about 2002, and prior to that
15 it had been Endoscopy Center of Nevada.

16 Q And you said at one --

17 A To my recollection, the anesthesiologists were
18 there when it was Endoscopy Center of Nevada.

19 Q Okay. So I'm -- I'm calling it by the wrong
20 name, probably. The name probably changed. But during --

21 A Yes, the name did change.

22 Q During that period I think you said initially
23 the facility or the center had the sedative; is that correct?

24 A During which period?

25 Q When you were using the anesthesiologists.

1 A They had some medications available to the
2 best of my recollection. At times the anesthesiologists would
3 bring in their own propofol.

4 Q Okay. Now, when the anesthesiologists started
5 bringing in their own propofol, do you remember what year that
6 was or approximately?

7 A I don't know exactly.

8 Q Okay. But it was sometime back in that time
9 period?

10 A Yes, correct.

11 Q And is it in that time period that you heard
12 or you had a conversation with Dr. Desai about the
13 anesthesiologists are now going to bring their own?

14 A Yes, and he thought that would be a good thing
15 because it might be a money-saving measure.

16 Q Now, sometime -- sometime after that the
17 practice moved to using CRNAs.

18 A Yes.

19 Q And approximately when did that occur?

20 A 2002, 2003, 2004, somewhere in that area.

21 Q During -- during the transition from
22 anesthesiologists to utilizing CRNAs --

23 A Uh-huh.

24 Q -- were there any meetings amongst the doctors
25 or amongst the partners to discuss this change from using

1 anesthesiologists to using CRNAs?

2 A Not that I recall. I think we were kind of
3 told somewhere along the line that that would occur. But I,
4 frankly, don't recall any specific meeting. That's not to say
5 it didn't happen, I just don't recall that.

6 Q Okay. Did you ever hear Dr. Desai during that
7 time period talk about the -- the change that was going to
8 happen between the anesthesiologists to moving to the CRNAs?

9 A No, I don't recall that.

10 Q Okay. At some point, though, you're aware
11 there were CRNAs?

12 A Of course.

13 Q And to your knowledge, how did -- what entity
14 was paying them?

15 A The CRNAs were employees of the
16 Gastroenterology Center of Nevada and they were, I assume,
17 based on that fact, paid by the Gastroenterology Center of
18 Nevada.

19 Q Okay. And is -- is that -- just refresh our
20 memory, is that the --

21 A Medical practice.

22 Q -- the big medical practice with the --

23 A Yes.

24 Q -- four locations that all the partners are
25 part of?

1 A Yes, that's correct.

2 Q So they actually weren't paid from the
3 procedure side?

4 A No, they were not.

5 Q During your -- during your work at the clinic,
6 were you ever -- were the doctors ever in meetings with the
7 CRNAs?

8 A At times.

9 Q And when those meetings occurred, when the
10 doctors were there and the CRNAs were there, were any other
11 staff members there?

12 A Tonya Rushing may have been present at some of
13 those meetings. In fact, I know she was. Now, whether it was
14 actually the CRNAs or not, what I recall is that the CRNAs --

15 MR. WRIGHT: Foundation, please.

16 THE WITNESS: -- and doctors met --

17 THE COURT: When was this meeting?

18 THE WITNESS: Please rephrase your question.

19 BY MS. WECKERLY:

20 Q Okay. Once -- once the practice moved to
21 using CRNAs, you said that was around the mid 2000s, 2003,
22 '04, '05 --

23 A Yeah.

24 Q -- somewhere in there? Is that yes?

25 A Yes.

1 Q Okay. During that period forward, like 2005
2 to 2007, were there ever just staff meetings that took place
3 where the doctors were present as well as the CRNAs that you
4 recall?

5 A Meetings that had to do with ACLS, that type
6 of thing, yes.

7 Q And what's ACLS?

8 A Advanced Cardiac Life Support.

9 Q Okay. So kind of a medical issue for
10 addressing sort of a crisis, I guess, with a patient, or what
11 is that?

12 A Those were meetings where a person who is
13 certified to teach and test for advanced cardiac life support
14 skills would come in and all medical practitioners would be
15 required to be there so that we could become -- stay current
16 with our certification in those areas.

17 Q And that would be like a training?

18 A Training, yes. Exactly right.

19 Q To your -- well, let me ask it this way. Who
20 -- who was the supervisor of the CRNAs?

21 A Dr. Desai.

22 Q Did you -- as a physician, did you have
23 authority over the CRNAs?

24 A No, I did not.

25 Q Did you have an experience where you were

1 upset with -- or not -- I don't know if upset is too strong a
2 word. Did you have an experience with Linda Hubbard where you
3 wanted to correct something that she had done?

4 A Yes, I did.

5 Q When was that, approximately?

6 A About 2007.

7 Q Okay. And generally what was -- what was your
8 issue with her?

9 A Her interaction with patients, which I thought
10 was inappropriate.

11 Q Okay. And did you address that with her
12 directly?

13 A Yes, I told her that she did not need to be as
14 confrontational with patients as she was and that I thought it
15 was inappropriate for her to behave that way.

16 Q Sometime after that, did you have a
17 conversation with Dr. Desai about Linda Hubbard?

18 A Yes, I did.

19 Q How long after you had the -- the exchange
20 with Ms. Hubbard did you have the conversation with Dr. Desai?

21 A As I recall, about two or three days
22 thereafter.

23 Q And where did that conversation take place?

24 A In Dr. Desai's office.

25 Q How did you know to go to his office and have

1 that conversation?

2 A I was summoned to go meet him there.

3 Q And how -- when you're summoned, what -- what
4 occurs? Where were you when you --

5 A I was somewhere on the premises. I don't have
6 the exact recollection of what I was doing at that point.

7 Q Okay. And who would've -- like did you get a
8 phone call or how did you know to go there?

9 A No, one of the secretaries.

10 Q Told you to go there?

11 A Yes, I think that would have been it.

12 Q So you go to Dr. Desai's office?

13 A Yes.

14 Q Is that yes? Was anyone else present besides
15 you and him?

16 A No.

17 Q And what -- what was the conversation?

18 A He told me that it wasn't any of my business
19 to be telling the CRNAs how to do their job, that the only
20 thing I would accomplish in doing so would be to hurt their
21 feelings. And that going forward if -- if me or if any of the
22 doctors had any concerns about anything that a CRNA did, that
23 we should not take it up with the CRNA, we should go to him.

24 Q Go to him directly, Dr. Desai?

25 A To Dr. Desai, yes.

1 Q What -- I mean, did you have any response to
2 that?

3 A I just told him that I was concerned about
4 patient -- patients -- the interaction with the patients and
5 that was my only reason for saying anything, that I didn't
6 think it was appropriate for her to be as confrontational with
7 patients as she was.

8 Q Did you feel -- well, let me ask you this.
9 Was the conversation between yourself and Dr. Desai about --
10 about that incident -- I mean, what was the tenor of it? How
11 would you describe it?

12 MR. WRIGHT: Objection.

13 THE WITNESS: He was --

14 THE COURT: Basis?

15 MR. WRIGHT: The tenor?

16 THE COURT: Well, you can -- I mean, how would you
17 describe the --

18 BY MS. WECKERLY:

19 Q Well, how would you describe his --

20 THE COURT: -- conversation?

21 BY MS. WECKERLY:

22 Q -- tone of voice or how would you describe the
23 conversation?

24 A Stern, authoritative.

25 Q And, I mean, was it -- were you arguing with

1 him?

2 A I tried to make my case, but it didn't get me
3 very far.

4 Q After that conversation with Dr. Desai, did
5 you ever do that? Did you ever raise any issues about the
6 CRNAs to him?

7 A Not to him. I did ask a CRNA about something
8 else once, but --

9 Q But not to Desai?

10 A Not to Dr. Desai.

11 Q Okay. Now, we've talked about that during the
12 colonoscopies and endoscopies there was sedation used.

13 A Yes, there was.

14 Q In two thousand, I guess, five through -- you
15 know, through the actually -- the clinic closing, what was the
16 -- what was the drug? What was used?

17 A Propofol.

18 Q Was anything ever used prior to that?

19 A I can't answer that. I wasn't there for every
20 procedure, but it was primarily and almost exclusively
21 propofol.

22 Q And are you -- are you familiar with propofol?

23 A I have some familiarity with it.

24 Q Okay. And how is propofol administered?

25 A It's an intravenous injection.

1 Q Are you familiar with aseptic technique?

2 A Yes, I am.

3 Q What does -- what does that mean to you?

4 A It means that any medical device or any device
5 that has been used that has penetrated body tissues should not
6 be used again. It should be discarded.

7 Q Do you know the size of the propofol vials
8 that were used at the practice?

9 MR. WRIGHT: Foundation.

10 BY MS. WECKERLY:

11 Q During 2005 to -- well, until it closed, to
12 2008.

13 A I don't know exactly. I know propofol comes
14 in 20 milliliter and 50 milliliter vials, or it did at that
15 time.

16 Q Okay. During that time period did you see
17 those size vials of propofol or did -- did you pay attention
18 or do you know what size was used?

19 A I don't really know. I was focused on my end
20 of the procedure and not much on what the anesthesiologist or
21 the anesthetist was doing.

22 Q Do you know how much propofol was typically
23 used during a colonoscopy, let's say?

24 A That varies greatly. I've seen anywhere from
25 50 milligrams to over 1,000 milligrams used in an individual.

1 Q Okay. And you'll have to do the conversion
2 for us. When you have milligrams, how does that relate to
3 like --

4 A Well, there's the --

5 Q -- the size of the vials?

6 A It's the concentration. And I believe a 20
7 milligram vial has 200 milligrams of propofol in it.

8 Q Okay.

9 A So ten to one.

10 Q Okay.

11 A And a 50 milligram vial would have 500, so,
12 again, the ten to one ratio.

13 Q Okay. And so if you're -- if you're doing a
14 procedure and it has -- and say it requires 150 milligrams of
15 propofol --

16 A Uh-huh.

17 Q -- and you have a 20 milliliter vial, are you
18 using the whole vial?

19 A You would use three quarters of it, or 15
20 milliliters.

21 Q Okay. And so there would be some left over?

22 A Yes.

23 Q And if you had the bigger vial, the 50, there
24 would be --

25 A Quite a lot more left.

1 Q Okay. And I am not going to do that math, but
2 if -- if the -- if during -- if during a procedure someone has
3 drawn up propofol -- well, let me ask you this. What size --
4 do you know what size the syringes are that were used at the
5 center in 2007 to administer propofol?

6 A No, I do not.

7 Q If they were 10 cc syringes, would that sound
8 right to you or would that --

9 A That would sound right because -- that would
10 sound right, yes.

11 Q Okay.

12 A That's a very commonly used size.

13 Q That's -- that's like a typical syringe used
14 during these types of procedures?

15 A Yes.

16 Q Okay. So if you were -- if that was going to
17 be administered to a patient and a CRNA drew up the 10 ccs --

18 A Uh-huh.

19 Q -- to a patient during a procedure, and at
20 some point the -- the decision was made or it was concluded
21 that the patient needed more propofol --

22 A Uh-huh.

23 Q -- what would be the proper technique to
24 administer additional propofol to that patient, assuming you'd
25 put the whole 10 in?

1 A Well, I can see two circumstances, but --

2 MR. WRIGHT: I would object as to foundation. I
3 believe he's stated he's never done this.

4 THE COURT: Yeah, that's sustained as to the
5 question. You can ask that -- I think I know where you're
6 going -- a different way.

7 BY MS. WECKERLY:

8 Q Okay. Actually, as a -- as a doctor you are
9 probably familiar with administering, generally, medication,
10 is that fair?

11 A Yes.

12 Q And in your training you mentioned that you
13 were familiar with aseptic technique?

14 A Yes.

15 Q And that is essentially training in how to
16 administer any kind of drug safely; is that correct?

17 A Yes.

18 Q And are you familiar with the standards or how
19 to generally administer medication --

20 A Uh-huh. Yes.

21 Q -- safely?

22 A Yes.

23 Q And how to avoid contamination?

24 A Yes.

25 Q And I think you said the -- the general

1 principle is anything that's been in contact with the patient
2 can't be reused.

3 A Anything that's invaded body tissues cannot be
4 reused when it comes to injectable -- to materials used to
5 give an injection. It's one use only.

6 Q Okay. And so if someone has injected a
7 patient with any kind of drug and it's determined that the
8 patient needs additional medication, what would be the proper
9 was to administer that?

10 MR. WRIGHT: Foundation as to the year because the
11 standard --

12 THE COURT: Well, no, I think that's a general
13 concept, so that's overruled.

14 MR. WRIGHT: Well, it changed.

15 MS. WECKERLY: No, it didn't.

16 THE COURT: Well, he's talking about --

17 Was there a change in aseptic techniques with
18 respect to reusing a vial over the years that you've
19 practiced?

20 THE WITNESS: Not that I'm aware of.

21 THE COURT: All right. Go on, Ms. Weckerly.

22 BY MS. WECKERLY:

23 Q So in your -- in your experience, what is the
24 proper way to administer additional medication?

25 A If it's going to be administered to that

1 patient and that patient alone, one could reuse the same
2 syringe, the same needle, in other words, if it's the one
3 specific patient.

4 Q Sure.

5 A If these materials are -- have been used, they
6 are to be discarded because you don't want to take a chance
7 with them being used on someone else. That means both needle
8 and syringe.

9 Q Okay. What if you took off the needle, but
10 used the same syringe to reaccess the vial of medication?
11 Would that be proper?

12 A If you're hoping to prevent
13 cross-contamination, that's not adequate because the syringe
14 might potentially have been in contact with the patient's
15 blood.

16 Q If you -- if you access a vial of medication,
17 administer it to a patient, take off the needle, but using the
18 same syringe, you go back into the vial of medication and
19 administer it to Patient A, would you ever reuse that vial of
20 medication on a subsequent patient?

21 A No, you could not.

22 Q And why would that be?

23 A Because you didn't change out the syringe and
24 there would have been the potential for cross-contamination.

25 Q And to your knowledge, that -- is that aseptic

1 technique? I mean, that's --

2 A It is not.

3 Q That would be violating that?

4 A It would be in contravention to aseptic
5 technique.

6 Q Okay. And has the standard on that since
7 you've practiced evolved, or is that --

8 A To my knowledge that has always been the
9 standard.

10 Q When you were working at the endoscopy center
11 in 2007, did you ever see a violation of aseptic technique?

12 A No, I did not.

13 Q If you had seen that --

14 A Uh-huh. Yes.

15 Q -- what would you have done?

16 A I would have reported it.

17 Q Why?

18 A Because it places patient safety at risk.

19 Q If you had seen someone reuse a syringe --

20 A Uh-huh. Yes.

21 Q -- what would you have done?

22 A I would have stopped it right then and there.

23 Q Same reasons?

24 A Same reasons, yes.

25 Q Okay. Now, in the -- in the endoscopy center

1 in this time period of 2007, after the procedure took place,
2 where -- where would the patient go?

3 A There is a recovery area.

4 Q And who would -- who would actually take the
5 patient out there to the recovery area?

6 A It would be the -- it would be the nurse,
7 perhaps the technician, perhaps the CRNA, or perhaps any
8 combination of those three.

9 Q Once they were in the recovery area, do you
10 know if there were additional vital signs taken off the
11 patient or if they were hooked up to any other machines,
12 anything like that?

13 A Yes, they were monitored in the recovery area
14 for a period of time.

15 Q Earlier we talked about the different
16 instruments that are used to perform these procedures.

17 A Yes.

18 Q Those instruments, let's talk about forceps.
19 Let's start with that, and then if I leave one out you'll have
20 to remind me. Are forceps able to be used more than one time?

21 A It depends on the forceps. Some of them were
22 reusable and could be sterilized; some of them were
23 disposable.

24 Q And in your experience in -- in 2006, 2007,
25 and into 2008, were the forceps used at the endoscopy center

1 the reusable type or the single use type?

2 A Single use, and they were stored in a cabinet
3 in sealed containers.

4 Q Were you aware of any reuse of the -- of the
5 forceps?

6 A No, I was not.

7 Q What about snares? What -- are they single
8 use or --

9 A Single use.

10 Q And were you aware of any reuse of that
11 equipment?

12 A No, I was not.

13 Q How about bite blocks?

14 A Those were reused.

15 Q And do you know if they're single-use or if
16 they're reusable?

17 A Bit blocks come in both varieties, single-use
18 and multi-use.

19 Q And do you know what kind you had at the
20 endoscopy center in 2007?

21 A I believe we had mostly single use bite
22 blocks.

23 Q Okay. And you -- and you believe those,
24 although being single-use, were reused?

25 A Yes.

1 Q Do you know how they were processed?

2 A They were processed by being cleaned and
3 sterilized.

4 Q Now, during this time period, and I'm talking
5 about in 2006 and 2007, did you ever hear Dr. Desai issue
6 instructions or comment about reusing supplies or -- or any
7 kind of limitations on the use of supplies?

8 A Yes, I did.

9 Q And what -- what did you hear him say?

10 A He commented to me that I used too much
11 lubricant on scopes, and he suggested that I put a small
12 amount on a gauze pad, which is called a four-by-four based on
13 its dimensions, and limit my use to that. He commented that I
14 overused personal protective gear, such as masks and coats,
15 and I should limit my use of those.

16 Q And the -- the mask and coats I assume you
17 used during the procedures because it could get kind of messy?

18 A Yes, they could become soiled.

19 Q What was your response to him telling you to
20 use, I guess, fewer lab coats? I mean, how would you use
21 less?

22 A I told him that if something were visibly
23 soiled, I was going to change it out. That's just the way it
24 was.

25 Q What did he say?

1 A I don't recall that he had much comment on
2 that.

3 Q And there were -- in addition to the coat, was
4 there -- do you wear protective eyewear?

5 A Well, I wear glasses. The masks do come with
6 a shield and it's hard to see through the shield and the
7 glasses. So sometimes I would remove the eye shield itself,
8 but I would always wear the mask to protect the nose and
9 mouth.

10 Q Did he ever instruct you or ask you to limit
11 anything in that regard?

12 A Yes, he did.

13 Q What did he say about that?

14 A That I should not try to wear more than one
15 mask per day.

16 Q Any other conversations in that same period
17 that you had with Dr. Desai about supplies or reusing supplies
18 that you recall?

19 A I recall a comment he made once in the
20 recovery room area.

21 Q Was that to you or was it to someone else?

22 A It was in general. He was announcing it to
23 everyone in the facility it seemed.

24 Q And was that in 2006 or --

25 A About 2007.

1 Q 2007?

2 A About there.

3 Q And do you recall if it was the beginning of
4 the year or the end or --

5 A No, I don't recall that specifically.

6 Q Who -- who was present in the recovery room
7 besides yourself?

8 A Patients, nurses, technicians.

9 Q Any -- any other doctors besides you?

10 A That I don't recall.

11 Q Okay. What did he say?

12 A He was saying that the nurses were using too
13 much tape on the IVs, tape to hold them in place, and that was
14 costing him money.

15 Q Any other comments besides that other than
16 what we've discussed?

17 A I had a technician --

18 MR. WRIGHT: Objection. Foundation.

19 BY MS. WECKERLY:

20 Q Well, let me just ask you, that you heard
21 directly from Desai?

22 A No, not directly from Desai.

23 Q Okay. Do you remember any meeting or any
24 policy regarding propofol and saline?

25 A Yes.

1 Q What time period was that issue discussed?

2 A 2006, 2007, thereabouts.

3 Q And what was -- where did that take place?

4 When did you first become aware of that?

5 A It was a physicians meeting.

6 Q In 2006 or 2007?

7 A Yes.

8 Q Who was present at that meeting?

9 A The various doctors.

10 Q The doctors that we've mentioned, Faris,
11 Herrero, yourself?

12 A Yes, that would be correct.

13 Q Who was talking at that meeting?

14 A Dr. Desai was.

15 Q And what was the -- what was Dr. Desai telling
16 you all?

17 A He mentioned that Dr. Nayyar had informed him
18 that at the VA when patients needed additional sedation, they
19 were frequently given only saline rather than additional
20 propofol. I didn't hear Nayyar say that. That was Dr.
21 Desai's comment.

22 Q Okay.

23 A And he mentioned that it's something we might
24 consider and that it would save the practice a significant
25 amount of money. And I forget what figure he quoted.

1 Q And was --

2 A But that might save us a significant amount of
3 money to follow that strategy.

4 Q Was there discussion amongst the doctors?

5 A Not really.

6 Q When you heard it, did it sound like a good
7 idea to you?

8 A No.

9 Q Why not?

10 A Because if a patient needs more sedation, they
11 deserve more sedation.

12 Q Did it -- did it even -- did make sense to you
13 even medically?

14 A No, it did not.

15 Q After that meeting did you observe any change
16 in the administration of propofol? Meaning, did it look like
17 people were doing propofol with saline?

18 A Yes. Well, maybe not saline in particular,
19 but there was one time that I was doing --

20 MR. WRIGHT: Foundation.

21 THE COURT: Okay. The --

22 BY MS. WECKERLY:

23 Q Yeah, the instance that you're referring to
24 now, how long after the meeting was it?

25 A I don't recall.

1 Q Was it like weeks, months, anything like that?

2 A Perhaps a few months. I don't recall exactly.

3 Q Okay. And where -- where was it? Where was
4 this incident?

5 A In the endoscopy center.

6 Q In a procedure room or --

7 A In a procedure room.

8 Q And who was present?

9 A Me, Mr. Lakeman, nurse, I suppose, and a
10 technician.

11 Q Okay. And --

12 MS. WECKERLY: Actually, may we approach, Your
13 Honor?

14 THE COURT: Sure. Actually, this is probably -- I
15 was waiting until 11:00, but let's just go ahead and take our
16 break right now.

17 MS. WECKERLY: Okay.

18 THE COURT: Ladies and gentlemen, we're going to
19 take about ten minutes, which will put us at 11:00.

20 During the break you're, of course, reminded you're
21 not to discuss the case or anything relating to the case with
22 each other or with anyone else. You're not to read, watch, or
23 listen to any reports of or commentaries on the case, person
24 or subject matter relating to the case, and please don't form
25 or express an opinion on the trial.

1 Place your notepads in your chairs and if you have
2 questions hand them to the bailiff on the way out the door.
3 And we'll see you back in about ten minutes.

4 (Jury recessed at 10:49 a.m.)

5 THE COURT: And, Dr. Carrera, you may, of course,
6 take a break, but don't discuss your testimony with anyone.

7 THE WITNESS: Thank you.

8 THE COURT: Okay?

9 THE WITNESS: Thank you.

10 (Outside the presence of the witness.)

11 THE COURT: Yes. Okay. They're gone.

12 MS. WECKERLY: The conversation that he's going to
13 refer to, I know what it is. It's -- he has a conversation
14 with Lakeman where it looks like according to the doctor the
15 patient needs additional medication. And Lakeman tells Dr.
16 Carrera, Desai doesn't want us to give more than 200
17 milligrams. And I understand there's a Bruton issue with
18 that. I just want to be able to lead and say that Lakeman
19 said that there was a limitation on the amount of propofol.

20 THE COURT: Without mentioning Dr. Desai --

21 MS. WECKERLY: Right.

22 THE COURT: -- told him.

23 MS. WECKERLY: Right. And then I don't know if the
24 defense wants like a contemporaneous instruction on how to use
25 that statement or whatever, but I mean, that -- that's why I

1 wanted to approach. Or I can just have it come in how he said
2 it.

3 THE COURT: Right.

4 MS. WECKERLY: Either way.

5 THE COURT: Well, I mean, there's various theories.
6 You can bring in the --

7 MS. WECKERLY: Right. I think it's arguably --

8 THE COURT: -- whole statement as a co-conspirator
9 statement --

10 MS. WECKERLY: It's arguably that, too. I just
11 didn't want to bring it out without having some ruling on int.

12 THE COURT: Well, and I don't know what Mr.
13 Santacroce's feeling is on bringing in the entirety of the
14 statement.

15 MR. SANTACROCE: Well, I'm going to object bringing
16 in --

17 THE COURT: Well, the statement is going to come in.
18 It's either going to come in as a -- as a response to a
19 leading question or the statement is going to come in in its
20 entirety. The question I'm asking you, Mr. Santacroce, is are
21 you fine with the limited way it comes in, you know, did he
22 say anything about being limited to having -- you know, not
23 using more than 200 milliliters or whatever, or do you want
24 the whole statement to come in with the limiting instruction
25 that it only can be considered against Mr. Lakeman? I mean,

1 the point, to me, would be that, you know, Lakeman is just
2 doing what he's told by Dr. Desai, that he's sort of an
3 innocent actor, he's following orders. So you might want the
4 whole statement in.

5 MR. SANTACROCE: My preference is, and I don't know
6 how Mr. Wright feels, but my preference is to have the whole
7 statement in.

8 THE COURT: Yeah, I mean, because in a way it's --
9 you know, it's sort of like, hey, I'm not culpable here. I'm
10 just doing what I'm told to do. And you've got another doctor
11 in there who is still in charge would could have said, I'm
12 sorry, I don't care what Dr. Desai does, your duty is to your
13 patients or something like that.

14 MR. SANTACROCE: That's what he does say.

15 THE COURT: Oh.

16 MS. WECKERLY: That's what he says.

17 MR. SANTACROCE: That's what he says.

18 THE COURT: As well he should have, and rightfully
19 so.

20 Mr. Wright? I mean, then I can tell the jury that
21 can only be considered against Mr. Lakeman and the weight that
22 they give the testimony is entirely up to them, but in any
23 event it can only be considered as against Mr. Lakeman.

24 MR. WRIGHT: Yes, I would want that instruction.

25 THE COURT: All right.

1 MR. SANTACROCE: If -- if they consider it at all.

2 THE COURT: That's what I mean, that, you know, the
3 weight that they give to any testimony is completely up to
4 them, but to the extent that they do consider it, it can only
5 be considered as to Mr. Lakeman.

6 Are you fine with that, Mr. Santacroce?

7 MR. SANTACROCE: Yes.

8 THE COURT: Are you fine with that, State?

9 MS. WECKERLY: Yes, thank you.

10 THE COURT: And we have two questions up here, and
11 you guys can look at them if you want.

12 MR. WRIGHT: Any tackle boxes?

13 THE COURT: That was a good question.

14 (Court recessed at 10:53 a.m., until 11:04 a.m.)

15 (Inside the presence of the jury.)

16 THE COURT: All right. Court is now back in
17 session. Everyone can be seated.

18 And, Ms. Weckerly, you may resume your direct
19 examination.

20 MS. WECKERLY: Thank you.

21 BY MS. WECKERLY:

22 Q Dr. Carrera, I think where we left off you
23 were talking about limitations on supplies, and you mentioned
24 there was one other instance where a supply issue came up and
25 it involved Mr. Lakeman.

1 A Yes.

2 Q And just -- just for the record, you see Mr.
3 Lakeman in the courtroom here today?

4 A Yes, I do.

5 Q What -- what time frame was this -- this
6 incident?

7 A About 2007.

8 Q 2007. And where did it take place.

9 A In the procedure room at the endoscopy center.

10 Q Were you the doctor doing the procedure at the
11 time? A Yes, I was.

12 Q And was Mr. Lakeman the CRNA who was doing the
13 anesthesia?

14 A Yes, he was.

15 Q Describe for us what happened.

16 A I was doing a procedure and in my usual
17 routine of looking at the patient from time to time it seemed
18 to me the patient might be uncomfortable. And I asked Mr.
19 Lakeman if the patient could safely get more propofol, and his
20 comment to me was that Dr. Desai did not want them giving more
21 than 200 milligrams of propofol to any one patient.

22 Q What did you say?

23 A I said, Ron, is -- that doesn't really matter.
24 If the patient needs more medication, he should get more
25 medicine. And he said fine and he administered more

1 medication to the patient.

2 Q And was that the end of that --

3 A Yes.

4 Q -- conversation?

5 THE COURT: I'm sorry. Ladies and gentlemen,
6 obviously the weight that is to be given any evidence is
7 strictly up to you. To the extent you consider the statement,
8 it may only be considered against the defendant Ronald
9 Lakeman.

10 MS. WECKERLY: Thank you, Your Honor.

11 BY MS. WECKERLY:

12 Q Now, you mentioned that at the endoscopy
13 center there's various records kept regarding each patient on
14 their procedure day, there's records kept for the procedure,
15 is that fair?

16 A Yes.

17 Q And are any of those records the physician's
18 records or, you know, filled out by you?

19 A The procedure note is the physician's record.

20 Q Okay. And we've seen some records. Is the
21 procedure note a computer generated note?

22 A Yes, it is.

23 Q And does it have little pictures of the -- the
24 procedure as it took place?

25 A Yes, still photographs.

1 Q And explain the process that -- that causes a
2 procedure note, I guess, to be created. How does -- how does
3 that come to get into the system, I guess?

4 A The -- there was an automated -- there was a
5 system in place for documentation, and most of it was point
6 and click. It was computer based. And to generate a note,
7 initially patient demographics would be entered into the
8 computer. That would be done sometimes by the technician,
9 occasionally by some other person, perhaps the physician on
10 rare occasion, but generally by the technician.

11 As the procedure is being performed, the performing
12 physician would take photographs of various landmarks within
13 the gastrointestinal tract, within the stomach or bowels, or
14 any significant lesions that might be encountered. At the end
15 of the procedure I would complete the narrative portion of the
16 -- of the document by point and click. Sometimes by --
17 sometimes by actually typing in information, but generally
18 point and click and that would close it.

19 Q Would you do that physician's note routinely
20 at the end of every procedure?

21 A Immediately after the procedure, yes.

22 Q Did you ever run out of time where you had to
23 do it later or anything like that?

24 A No.

25 Q The -- the computer -- the computer note has a

1 -- has a time noted on that; is that correct?

2 A Yes, it is time stamped.

3 Q Is that time synchronized with any other time
4 in the clinic to your knowledge?

5 A Not that I'm aware of.

6 Q Are the -- to your knowledge, are the
7 different procedure rooms, are the monitors or the computers
8 or anything synchronized as to time?

9 A Not that I'm aware of.

10 Q Did you in working there ever have the
11 occasion to review a post-op note or a nurse's note or did you
12 look at those notes before you were done or had completed your
13 physician's note at all?

14 A No, my input was limited to the physician's
15 note.

16 Q Okay. Would you -- would you have ever looked
17 at those notes, or was that just sent on in the packet
18 documenting the procedure? Any nurse's notes ever.

19 A No.

20 Q During 2007, how would you describe the case
21 load of procedures, not the medical side, but the procedures
22 at the endoscopy center?

23 A Very heavy.

24 Q And approximately, I mean to the best of your
25 recollection, how many procedures were you all doing a day?

1 A It varied, but generally about 70 to perhaps
2 on a very busy day 80.

3 Q What time did the first procedure start?

4 A To the best of my recollection 7:00 a.m.

5 Q And do you know how those first few patients
6 were scheduled?

7 A My understanding was that initially they would
8 schedule five patients with the same procedure times, be they
9 7:00, 7:30, there would be four or five patients there so that
10 if there were any no-shows the clinic could start right on
11 time and not be waiting for a patient to show.

12 Q What happened if all the 7:00 or 7:15ish
13 people showed up?

14 A Then we got behind.

15 Q From the beginning?

16 A Right from the start.

17 Q Did you ever have any conversations with Dr.
18 Desai regarding how long it took you to do, you in particular,
19 to do procedures?

20 A He berated me about that on multiple
21 occasions.

22 Q And what -- what time period are we talking
23 about?

24 A 2005, '06, '07, '08.

25 Q And would he call you into his office and have

1 these conversations?

2 A Even to the point of presenting them at group
3 meetings.

4 Q And what -- you mean like doctor meetings?

5 A Yes.

6 Q What -- what would he -- what would he say?

7 A He was always harping on the fact that it took
8 me very long to do procedures in his estimation.

9 Q Was this like the sort of the agenda of the
10 meeting, or was it like a side conversation you had maybe
11 before the meeting or after the meeting?

12 A At times he made it the agenda of the meeting.
13 It was a topic of discussion. Among other topics, of course,
14 but --

15 Q How would -- how would he express it? I mean,
16 would he say your name or what would he do?

17 A Oh, yes, absolutely.

18 Q What would he say? Would he address you?

19 A That I was taking too long to do procedures,
20 and he told me that if I was slow in doing procedures it's
21 because I lacked confidence. And his comment was, quote,
22 speed equals confidence, unquote.

23 Q And were you the only doctor that was singled
24 out in that regard?

25 A He was concerned about Dr. Mukherjee's speed

1 in doing procedures.

2 Q During those meetings, I mean, did you respond
3 or did you offer, you know --

4 A The only response I gave him was that I would
5 take what length of time it took to do a procedure thoroughly,
6 safely, completely.

7 Q Besides during the doctors meetings, did he
8 ever discuss the speed at which he did procedures --

9 A Yes, he did.

10 Q -- in front of staff? When -- when was that?

11 A Same time frame.

12 Q Same time frame. And then if you were around
13 staff would it be -- where in the facility?

14 A Not around staff. He would just talk to me on
15 a one to one.

16 Q Oh, okay. And so that would be just various
17 places in the endoscopy center?

18 A Right, within the facility.

19 Q Same types of comments about --

20 A Yes.

21 Q -- confidence or --

22 A Yes, that and -- that was basically it. Yes.

23 Q Do you remember a time in 2007 where Dr. Desai
24 suffered a stroke while he was --

25 A Yes.

1 Q -- while he was traveling on vacation?

2 A Yes, I do.

3 Q When he suffered that stroke, who was managing
4 the facility at that time?

5 A It was supposed to be Dr. Carrol.

6 Q And when Dr. Carrol was in charge, did you
7 notice any -- any difference at all?

8 A He scheduled fewer procedures to be done at
9 the endoscopy center.

10 Q In your recollection, how long was Desai out
11 before he came back?

12 A He came back to work really very soon
13 thereafter, within days, if I recall correctly, and he went
14 back to work full time meaning doing procedures and playing a
15 full role two to three weeks thereafter, if I recall
16 correctly. It was pretty quick. I was impressed with how
17 quickly he apparently recovered.

18 Q The -- when someone -- when a patient -- I
19 want to talk just briefly about billing. When a patient gets
20 either procedure done at the -- either a colonoscopy or an
21 endoscopy, what are they charged for? What does their bill
22 consist of?

23 A There are three major components. One is a
24 facility fee, one is a physician's fee, and one is an
25 anesthesia fee.

1 A Oh, okay.

2 Q -- and I understand you to say only a monitor.
3 So you tell me.

4 A Oh, okay. Yes, like if a monitor that we use
5 to record vitals, if it wasn't working properly, we would
6 switch it out.

7 Q Okay. I see. And I'm almost done here. I
8 just want to hit a few points. If a scope accidentally
9 touched the floor before a procedure, what would you do?

10 A I didn't have that experience, so --

11 Q Do you remember telling the police officer on
12 your second interview that if a scope touched the floor the
13 doctor would say get a new one, the doctor being Dr. Desai.

14 A I don't remember that. I don't think I said
15 that, Dr. Desai said that, to get a new one. I don't think I
16 -- I don't remember saying that.

17 Q Let me show you the statement and see if it
18 refreshes your memory.

19 A That's fine.

20 Q This was your second statement.

21 MS. STANISH: Page 58.

22 BY MS. STANISH:

23 Q I have some highlights on here that you can
24 just read whatever you feel like you need to read to refresh
25 your memory.

1 A Okay.

2 Q I'm always nervous coming down those stairs.
3 And does that refresh your memory as to what we just
4 discussed?

5 A Not really.

6 Q Do you need to read it again?

7 A No, I mean --

8 Q Oh, you don't --

9 A -- I read it, but I still don't like remember.

10 Q Oh, I understand. Okay. For the record,
11 then, Detective Whitely asked you did you ever see any unsafe
12 practices with the scope as far as them being dropped or
13 touching a surface and then still being used? Answer, no, no,
14 because if the scope had touched the floor, the doctor would
15 be like get another one. So they were pretty -- and you said,
16 yeah, they were pretty good about that.

17 A Okay.

18 Q And were you trained for a period of
19 approximately six weeks?

20 A No.

21 Q You went to each -- you were at each --
22 stationed, if you will, the pre-op, the procedure room, and
23 cleaning room; correct?

24 A Correct.

25 Q And at -- in order to train for that did I you

1 shadow somebody for a period of time?

2 A I shadowed Christina Rodriguez for a week in
3 pre-op. And in the rooms, the procedure room and the scope
4 room, I shadowed Freddie for a week.

5 Q Okay. I have nothing further.

6 THE COURT: All right. Thank you.

7 Redirect?

8 REDIRECT EXAMINATION

9 BY MS. WECKERLY:

10 Q Just a couple questions. I'm putting on the
11 overhead State's 126. And I just had a question. This --
12 this poster that we see here, do you know when that was put
13 up?

14 A After the investigations.

15 Q Okay. So after the CDC and the Health
16 Department came this poster went up on the wall?

17 A Yes.

18 Q And Ms. Stanish asked you about the experience
19 of having a scope drop on the floor and she asked you about
20 what you told the police about that in your interview. Do you
21 remember that --

22 A Yes.

23 Q -- just a second ago? And your answer was if
24 the scope touched the floor, the doctor would be like get
25 another one. That as in your statement?

1 A That's what I just read, yes.

2 Q That wasn't a reference -- well, was that a
3 reference to Dr. Desai? I mean, did you have that experience
4 with him?

5 A I don't know. I don't remember.

6 Q Okay.

7 A That's why I can't --

8 Q So it's not necessarily referring to him?

9 A Right.

10 Q Ms. Stanish asked you about the CRNAs
11 interviewing the patients in the actual procedure room.

12 A Yes.

13 Q Did you ever see Dr. Desai start a procedure
14 before a patient was under anesthesia?

15 A Yes.

16 Q On more than one occasion?

17 A Yes.

18 Q And what would the -- how would the patient
19 react?

20 A The patient would be struggling, biting,
21 gagging.

22 Q Thank you.

23 THE COURT: Any recross, Mr. Santacroce?

24 MR. SANTACROCE: No, Your Honor.

25 THE COURT: Ms. Stanish?

1 MS. STANISH: No, Judge. Thank you.

2 THE COURT: Any juror questions for this witness?

3 I'll see counsel at the bench.

4 (Off-record bench conference.)

5 THE COURT: Ma'am, we have a juror question. A
6 juror would like to know did you ever see Keith Mathahs carry
7 a tackle box from room to room?

8 THE WITNESS: No.

9 THE COURT: Okay. Did you ever see Keith Mathahs
10 with a tackle box?

11 THE WITNESS: I don't know what a tackle box is,
12 so --

13 THE COURT: Like, you know, fishermen, it's like any
14 kind of a -- well, let's just say any kind of a box.

15 THE WITNESS: No.

16 THE COURT: Okay.

17 State, any follow up?

18 MS. WECKERLY: No, Your Honor. Thank you.

19 THE COURT: Defense, any follow up?

20 MS. STANISH: No, Judge

21 MR. SANTACROCE: No.

22 MS. STANISH: Thank you.

23 THE COURT: Any additional juror questions before we
24 excuse the witness? No?

25 All right. Ma'am, thank you for your testimony.

1 Please don't discuss your testimony with anyone else who may
2 be a witness in this case.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Thank you and you are excused.

5 And the State may call it's next witness.

6 MR. STAUDAHER: The State calls Ruta Russom to the
7 stand, Your Honor.

8 RUTA RUSSOM, STATE'S WITNESS, SWORN

9 THE CLERK: Thank you. Please be seated. And
10 please state and spell your name.

11 THE WITNESS: First name Ruta, R-U-T-A, last name
12 Russom, R-U-S-S-O-M.

13 THE COURT: All right. Thank you.

14 Mr. Staudaher.

15 DIRECT EXAMINATION

16 BY MR. STAUDAHER:

17 Q Did you say your last name is pronounced how?

18 A Russom.

19 Q Russom. Okay. And I think I said Russom, so
20 I'm sorry about that.

21 A It's okay.

22 Q Ma'am, I want to take you back in time a
23 little bit and ask you if you ever worked for a place called
24 the Endoscopy Center of Southern Nevada?

25 A Yes.

1 Q What was the --

2 THE COURT: I was just going to say you have a soft
3 voice, so that black box in front of you is --

4 THE WITNESS: Oh, okay.

5 THE COURT: -- the microphone. Just kind of try to
6 talk into that so we can make sure everybody hears you.

7 THE WITNESS: Okay.

8 BY MR. STAUDAHER:

9 Q And just so we know, I'm going to show you a
10 couple of pictures, and you can draw on this screen with your
11 fingernail, and then just tap it down here to clear it if we
12 need to do that. Okay?

13 A Okay.

14 Q All right. What was the time frame you worked
15 at the endoscopy center?

16 A September 2005 until it closed.

17 Q In '08?

18 A In '08.

19 Q Early '08? During that time, what -- what was
20 your first job when you first started there?

21 A When I first started?

22 Q Yes.

23 A I was in medical records.

24 Q What did you do in medical records?

25 A Filing.

1 Q Now, had you had any clinical experience or
2 training prior to going to the endoscopy center?

3 A No.

4 Q So you were just doing filing in the medical
5 records area?

6 A Yes.

7 Q How long did you do that job?

8 A Approximately six months.

9 Q Was it the same job the whole time, or did you
10 graduate to other places?

11 A No, just there.

12 Q At some point after six months, because that's
13 long -- I mean, that's not as long as you worked there;
14 correct?

15 A No.

16 Q Did you switch jobs in some way?

17 A Switch jobs?

18 Q Did you do something else besides filing
19 records?

20 A No, not in that six months. No.

21 Q Okay. After the six months?

22 A Yes.

23 Q What happened then?

24 A I started doing front desk at the endoscopy
25 center.

1 Q Now, what does front desk mean?

2 A Checking in patients.

3 Q What do you typically do when a patient comes

4 in to be checked in?

5 A I would give them their paperwork, their

6 consent forms to sign, and explain it and also collect their

7 copays at that time, as well.

8 Q Would you do anything else other than that

9 initial sort of interaction with the patient?

10 A No.

11 Q Would the patients then go somewhere?

12 A They would have a seat for their procedure to

13 be ready.

14 Q How long did you do that particular job?

15 A Until it closed in -- I did that until it

16 closed, the front desk.

17 Q Until the front desk closed you mean?

18 A Until the facility closed.

19 Q Okay. So you did that job throughout the

20 whole time thereafter?

21 A Uh-huh.

22 Q Now, was that the only place that you worked

23 in the clinical side of things, or -- or did you go somewhere

24 else and do anything?

25 A I also was trained to be a GI tech.

1 Q So let's stick with the front desk for a
2 moment.

3 A Uh-huh.

4 Q So you had quite a long time working at the
5 front desk, I assume?

6 A Yes.

7 Q When you're working there and the patients
8 come in, what hours of -- were you that you typically worked?

9 A From 6:30. I usually opened the facility.

10 Q So you got there in the morning, and you were
11 there until when?

12 A Probably 2:30, 3:30. It just depends on how
13 busy we were.

14 Q So you didn't stay until the very end of the
15 day, then?

16 A No, not usually.

17 Q Now, when you first -- when you first were
18 there in the morning, and let's stay at the front desk,
19 patients come in? I mean, how many patients would come in at
20 a time at the very beginning of the day?

21 A The beginning of the day usually three --
22 three to four.

23 Q So it would be just a few patients?

24 A Uh-huh.

25 Q Now, you had a lot -- and we've seen some

1 pictures of the waiting room area. And I'm showing -- going
2 to show you what has been marked as -- admitted as State's
3 114. Do you see that?

4 A Yes.

5 Q Now, there -- it looks like some areas where
6 there's some counters up in the top portion of this.

7 A Yes.

8 Q Is there any place around here where you would
9 be working when you were working the front desk?

10 A The first window.

11 Q So right in here?

12 A Yes.

13 Q So you're there working at the front desk.
14 Obviously you can see the waiting room.

15 A Yes.

16 Q Throughout the day during the time you were
17 there, did it get crowded?

18 A Yes.

19 Q Was it ever -- I mean, were there seats
20 available all the time for people, or what was the situation?
21 I mean, how crowded is crowded is what I'm asking you.

22 A Every seat was taken. It was crowded.

23 Q Did you ever have to deal with people
24 complaining or being upset because they were waiting?

25 A The wait time, sometimes there was people -- a

1 few people who were angry, upset, haven't eaten yet.

2 Q And where -- how many bathrooms were available
3 there for the -- for the patients that were there?

4 A Bathrooms?

5 Q Yes.

6 A Just one for the males and one for females.

7 Q Okay. These are all patients that have had
8 preps the night before and all that; correct?

9 A Yes.

10 Q Was there ever any issue with people needing
11 to use the bathroom and somebody is in there?

12 A I don't remember. No, not that I recall.

13 Q Okay. So let's move away from the front desk
14 area for a moment. You said you became a GI tech at some
15 stage?

16 A Yes.

17 Q Tell us about what training you went through
18 to do that work at the clinic.

19 A I had one week of training in the recovery
20 area, and one week of training in the rooms to assist the
21 doctor.

22 Q Okay. So you -- so you worked as a GI tech.
23 Did you clean the scopes, as well?

24 A I only cleaned scopes when it was time to
25 break the techs that were actually working in there.

1 Q Okay. So that wasn't a regular job of yours?

2 A No.

3 Q So after you left the front desk area and
4 started working elsewhere, how much -- how did you split your
5 time? Because you mentioned a recovery area, procedure room,
6 the front desk, and the scope cleaning.

7 A I would usually come in and usually there
8 would be another person doing the front desk. She usually
9 came in at 8:00. So from 6:30 to 8:00 I would run the front
10 desk. After that I would continue to help on the floor the
11 recovery area.

12 Q Would you shift between those areas that you
13 described?

14 A Yes.

15 Q When you -- excuse me. When you're in the
16 recovery room area, what is your job? What are you doing
17 there?

18 A Mainly calling the patients for their
19 procedures, having them undress, putting them in the gurney,
20 taking them in the room, hooking them up.

21 Q Now, as far as the gurneys are concerned, and
22 let me go to that area here. I'm showing you what has been
23 admitted as State's 119. And, again, I'll go out just a
24 little bit for that. Do you see the -- see that picture?

25 A Yes.

1 Q Does that look like some of the gurneys that
2 you're talking about?

3 A Yes.

4 Q Now, the orientation of those gurneys, the
5 foot of the bed is toward the wall, and the head -- it looks
6 like the head is toward the front; is that right? Because
7 there's a pillow toward the front and it angles --

8 A Yes.

9 Q -- right here. Is that the way they
10 traditionally work?

11 A No.

12 Q How would they normally be?

13 A It would be the opposite way.

14 Q So when they're all lined up like that, they
15 would be normally the other direction?

16 A Yes, sir.

17 Q So when you brought the patients into the
18 rooms where the procedures were done, how did that happen?
19 How did you do that?

20 A How would we --

21 Q How is it you would move them in there?

22 A We would wheel them in the opposite way. It
23 depends on which procedure they're having, too.

24 Q So the people that were on the gurneys, I
25 mean, were they already on the gurneys, or did you wheel the

1 gurney in and then put the people on it?

2 A It depends. If the gurney was already in the
3 room, we'd go ahead and put them in the room. But usually
4 we'll bring them to the gurney and wheel them in.

5 Q Okay. Now, you've got the patient on the
6 gurney and you are back there in the recovery room area.
7 Besides just helping move patients around and so forth, was
8 there any other thing that you did filling out charts,
9 records, anything like that in the recovery room area?

10 A No, just -- I knew that we had to, after they
11 were done, blood pressure line, we'd print it out and staple
12 it to the chart.

13 Q Okay. And I'm going to show you another angle
14 of that recovery room. You see this -- this one here?

15 A Yes.

16 Q And this is 118 for the record. Now, again,
17 all of those beds are lined up in the same way as -- as we see
18 them across the base there; correct?

19 A Yes.

20 Q So when a patient was on this, and you said
21 these beds would be the other direction when you normally
22 would deal with them?

23 A Yes.

24 Q The move from here, and the procedure rooms
25 are on the left hand side?

1 A Yes.

2 Q So they would move into the procedure rooms
3 and out of the procedure rooms?

4 A Yes.

5 Q Now, showing you 122, does that look familiar
6 to you?

7 A Yes, that's the procedure room.

8 Q So you worked in there, as well?

9 A Yes, I did.

10 Q Now, when you were in the procedure rooms,
11 what -- what did you do?

12 A Assist the doctors.

13 Q When you assist the doctors, what kind -- I
14 mean, how are you assisting them? What are you doing actually?

15 A I would -- whatever they needed I would
16 actually help them with, like forceps or a flush, a snare,
17 whatever they asked for.

18 Q Okay. And as far as the actual scope cleaning
19 room, do you remember that one?

20 A Yes.

21 Q And I'm showing you 128. Do you recognize
22 those?

23 A Yes.

24 Q What are they?

25 A Those were the machines we put the scopes in

1 to clean.

2 Q And when you -- I mean, did you actually do
3 the scope cleaning as well as, you know, just bring the scopes
4 in or dealing with them? I mean, did you use these machines?

5 A I would have if I was breaking the person
6 inside the cleaning room.

7 Q Okay. And, again, 126, do you see that?

8 A Yes.

9 Q Does that also look familiar to you?

10 A Yes.

11 Q Now, these buckets that are over here, do you
12 see those in the sink?

13 A Yes.

14 Q Would those be used by you for some reason to
15 clean the scopes?

16 A Yes.

17 Q When you went into the scope room to -- and
18 let's stay here for just a moment. We'll go back to the
19 procedure room in a minute. When you were in the scope room,
20 who trained you to do the cleaning of the scopes?

21 A Who trained me?

22 Q Yes.

23 A Like the person?

24 Q If you recall.

25 A It was Christina. She was the lead tech for

1 us.

2 Q And how -- how much training? I mean, how
3 long were you essentially trained by someone before they kind
4 of let you do your own thing?

5 A It was a week.

6 Q So you're there a week. When you're cleaning
7 the scopes, and I know that this isn't your full time job;
8 right? This is where you're doing the relief?

9 A Yes.

10 Q When you're doing the relief, how many scopes
11 would you typically use in a -- I mean, did you put them in
12 these buckets? We kind of understand that's where it goes.
13 There's some solution in the buckets. You put the scopes in
14 there?

15 A Yes.

16 Q How many scopes would you put through the
17 solution at a time?

18 A It would be one at a time to clean it.

19 Q And how much would -- how many scopes would
20 you clean in that solution before you would -- well, did you
21 ever change it?

22 A Did I change the solution while I was
23 cleaning?

24 Q No, at some point. During -- you know, after
25 you've cleaned a few scopes, or maybe if you didn't, you could

1 let us know that as well.

2 A Yes, we would change -- I would change the
3 solution.

4 Q Okay. How many scopes would you run through
5 the solution before you changed it typically?

6 A I was told three scopes would -- would be
7 fine, but common sense kicked in. If it -- if the solution
8 was dirty, I would clean it, and put a new one in. Just
9 common sense.

10 Q So that's what you were instructed, and you
11 would change it depending on how dirty the solution was?

12 A Yes.

13 Q Now, the solution itself that was in these
14 buckets, was that different than the solution that was in
15 these Medivator units? Did you know there was a cleaning
16 solution inside the Medivator unit?

17 A Yes, I knew that.

18 Q Did you ever clean that yourself? Change --
19 change that solution?

20 A No, not inside the machines. No, I didn't.

21 Q Did you ever test that or did you know it
22 needed to be tested?

23 A Tested, yes. Every morning it was supposed to
24 be tested.

25 Q And would you do that testing sometimes?

1 A Yes.

2 Q So when you tested it, what were you looking
3 for?

4 A The colors, the changing of the colors, making
5 sure that the solution is still good.

6 Q But did -- during the time that you worked
7 there, did you ever change the solutions themselves?

8 A No.

9 Q So after it was tested in the morning, would
10 you test it later on in the day?

11 A I wouldn't have, no.

12 Q Okay. So unless you were doing it in the
13 morning, if I understand you correctly, if you just came in
14 there to relieve somebody at some point, you wouldn't test the
15 solutions or do anything like that?

16 A No.

17 Q Okay. Did you actually ask anybody at any
18 point about that whole thing with the solution?

19 A I did.

20 Q Did anybody -- what was that about? What did
21 you want to know?

22 A Just out of curiosity, when we, you know, the
23 colors. I didn't even know about the colors until I asked.
24 And --

25 Q Go ahead.

1 A No, go ahead. Sorry.

2 Q You said that you didn't even know about the
3 colors until you asked?

4 A Uh-huh.

5 Q So you asked about that?

6 A Uh-huh.

7 Q So was that not part of your training
8 initially?

9 A When I first got trained, no, it wasn't. When
10 I asked the techs that usually were in there, they explained
11 to me what the colors were and what to look for when it does
12 change and what we needed to do.

13 Q Now, did anybody ever instruct you on how to
14 even change the solution?

15 A No.

16 Q Did you ask somebody to do that?

17 A I did.

18 Q But you were never shown?

19 A No.

20 Q Now, let's go back into the procedure room for
21 a minute. Well, actually, before I leave this room I want to
22 ask you, the scopes themselves, after they were clean did they
23 go somewhere to dry or something?

24 A Yes, there was a cabinet we put the
25 colonoscopes in or the EGD scopes in.

1 Q In a different cabinet? They were in separate
2 cabinets, the EGD scopes and the colonoscopes?

3 A Yes.

4 Q When you came in in the morning, did you see,
5 you know, those chuck things that were underneath them, and
6 I'll show you what I'm talking about in State's 150. Do you
7 see these devices, these sort of pads at the bottom of the
8 scopes?

9 A Yes.

10 Q Do you see the scopes hanging down in this
11 particular cabinet?

12 A Yes.

13 Q When you came in in the morning on the
14 instances that you were actually in the room and seeing this,
15 did you ever see these pads with any residues, fecal material
16 that may have drained out overnight?

17 A Yes.

18 Q Was that something that happened more than
19 once or twice?

20 A I don't remember how many times it did happen.

21 Q Was it multiple times?

22 A Yes.

23 Q During the day were you actually in there
24 doing the scopes and hanging them and doing that, or was that
25 just in the morning when you came in?

1 A To check the --

2 Q The pads.

3 A The pads, just in the mornings and then when I
4 covered at lunch time.

5 Q Now, let's go back to the procedure room. And
6 we're displaying 122 once again. The patients that came
7 through there, obviously you see all aspects. You were out in
8 the recovery area, you're in the procedure rooms, you're in
9 the scope room, and you also are checking patients in;
10 correct?

11 A Yes.

12 Q What was your -- can you tell us about the
13 volume of patients that came through there? Was it high, was
14 it low, was it average? How did you consider it?

15 A It just depends on the day how many we had.
16 Not all of them showed up on the schedule, but it just depends
17 on -- on the day.

18 Q Well, did you think that the -- the numbers
19 coming through were concerning to you at all?

20 A There were -- sometimes we were very busy, and
21 sometimes we weren't.

22 MS. STANISH: I'm sorry. I couldn't hear that.

23 THE COURT: She said sometimes you were very busy
24 and sometimes you weren't?

25 THE WITNESS: Yes.

1 BY MR. STAUDAHER:

2 Q Did you ever think that there were too many
3 patients coming through the clinic?

4 A At one point, yes.

5 Q And what -- what are we talking about? In
6 relation to when the clinic closed, was that something that it
7 built up or it was a sustained thing? I mean, what are we
8 talking about?

9 A Repeat it again? I'm sorry.

10 Q You said at one point.

11 A Uh-huh.

12 Q What are you talking about at one point?

13 A Just the volume of the patients. At one point
14 they were -- it was a lot to handle in one day.

15 Q Did you think it was too much?

16 A Yes.

17 Q And why -- what was the problem with there
18 being that many patients coming through?

19 A Just the volume of staff, too. You had to
20 look at how many we were taking care of these patients.

21 Q Did you ever feel you were stressed by that?

22 A Sometimes, yes.

23 Q Now, what about the staff since you mentioned
24 that? Was it the staff there was -- I mean, would they stay
25 working the same staff for a long period of time? Was there

1 turnover?

2 A There was a lot of turnovers.

3 Q And you stayed there for a fair bit of time?

4 A Yes.

5 Q When you worked there, did the people that you
6 work with, did they change regularly?

7 A Yes.

8 Q Now, what I'm talking about is not people to
9 get promoted to another part of the practice.

10 A No. No.

11 Q So are we talking about people that came to
12 work there --

13 A And they would come back.

14 Q -- only stay for a time and leave?

15 A Yes.

16 Q Okay. As far as the procedure room itself,
17 and I'm going to talk to you about Dr. Desai for a moment, was
18 it different being in a procedure room with him than with
19 other doctors?

20 A Sorry? You said it was --

21 Q Was it different being with Dr. Desai in a
22 room doing a procedure than the other doctors?

23 A Not really. They all needed the same things
24 help-wise.

25 Q What about the speed of the procedures?

1 A It was a little bit faster than the other
2 doctors.

3 Q Did you ever see Dr. Desai start procedures on
4 patients before they were under anesthesia?

5 A That only happened to me once.

6 Q Can you describe that?

7 A Can I describe that?

8 Q Yeah, tell us what happened.

9 A I can't really. It's been a long time.

10 Q Do you remember giving a statement to the
11 police at some point?

12 A Yes, I did.

13 Q Would it refresh your memory to maybe look at
14 your statement to read a copy of the transcript to refresh
15 your memory?

16 A I had it. I didn't bring it with me.

17 Q I can provide it to you.

18 A Okay. Sorry.

19 Q Would that help you?

20 THE COURT: He's going to show you the statement --

21 THE WITNESS: Okay.

22 THE COURT: -- and then you can read it --

23 THE WITNESS: All right.

24 THE COURT: -- and then let him know whether or not
25 that refreshes your memory. Okay?

1 THE WITNESS: Okay. Thank you.

2 THE COURT: Mr. Staudaher, go ahead and approach the
3 witness.

4 MR. STAUDAHER: Page 21 for counsel.

5 BY MR. STAUDAHER:

6 Q And you can read as much before and after as
7 you need to to get context. When you're done -- go ahead and
8 read it and let me know when you're done.

9 A Okay.

10 Q Okay. Does that refresh your memory?

11 A Yes, it does.

12 Q Can you tell us about that instance?

13 A It was an EGD, it was a female having an EGD
14 done. And like I said there, she kept on saying she wasn't
15 asleep, that she felt the scope.

16 Q And what -- what happened?

17 A He continued with the procedure.

18 Q So she's saying I'm not asleep or something,
19 and he continues?

20 A Yes.

21 Q When you say he continued, I mean, did he go
22 ahead and do the entire procedure?

23 A I mean, at one point she did fall asleep, but
24 during him inserting the scope she wasn't.

25 Q How did that make you feel, what you saw and

1 witnessed at that time?

2 A Uncomfortable.

3 Q Did it upset you?

4 A A little bit.

5 Q Did you talk to him about it?

6 A Yes, I did.

7 Q Did he actually go out and talk to the patient
8 about it at some point?

9 A Yes, he did. He actually apologized.

10 Q Was the patient asleep -- or was the patient
11 upset by this afterward?

12 A She was still -- when she came to she was
13 still talking about it.

14 Q Okay. And what did she say?

15 A That, you know, he could have waited until she
16 actually fell asleep to, you know, do the procedure.

17 Q With regard to reuse of supplies and things
18 like that, did you ever witness anything being reused,
19 whatever it was, syringes, propofol, bite blocks, anything
20 like that?

21 A The only thing I can think of was the bite
22 blocs that we did reuse.

23 Q Okay. So you were -- you reused bite blocks
24 on people?

25 A Yes.

1 Q And what would happen to the bite blocks once
2 they got used?

3 A We would clean them just like we would with
4 the scope.

5 Q It would go in the solutions and the whole
6 works?

7 A Yes.

8 Q And we're talking about both scopes, both
9 upper and lower scopes in the same solution?

10 A Yes.

11 Q What about things like gowns?

12 A It depends on which gowns they wore.

13 Q Okay. What's the difference?

14 A One of the gowns were just the wrap on, and
15 another one was a thicker one.

16 Q So tell us the difference between the gowns
17 with regard to the reuse issue.

18 A That if we used the thicker gown, we wouldn't
19 -- we weren't supposed to take it off. So we would put that
20 on with the other gown that we would take off and throw away.
21 There was two different gowns.

22 THE COURT: Gown that you wore or gown that the
23 patients wore?

24 THE WITNESS: We work.

25 THE COURT: Oh, okay.

1 THE WITNESS: I'm so sorry. We wore. The plastic

2 THE COURT: No, no. Mr. Staudaher --

3 THE WITNESS: -- gowns that we wore.

4 BY MR. STAUDAHER:

5 Q So the plastic -- there were two types that
6 you -- you all wore?

7 A Yes.

8 Q And was one a reusable one?

9 A Yes.

10 Q Was one a disposable one?

11 A Yes.

12 Q Well, let's talk about the disposable ones.

13 Was there any issue with Dr. Desai in using too many
14 disposable gowns, anything like that?

15 A Not to me, no.

16 Q What about the ones that were not reusable?

17 A Those ones, I mean, if you wore them you
18 wouldn't throw them away. We knew -- we just knew that. It
19 was just one of the -- if you wore those gowns, you wouldn't
20 throw it away.

21 Q Right. But as far as reusing them or getting
22 a new one --

23 A Now, you would keep that gown on.

24 Q Even if it got dirty?

25 A We usually put that one on, and then the one

1 that we threw away we would put it on top so we wouldn't get
2 it dirty.

3 Q Would Dr. Desai yell about gown use?

4 A Not to me, no.

5 Q Did you hear him yell at other people about
6 that?

7 A Not that I know of, no.

8 Q I've got your transcript. Would it refresh
9 your memory to look at a copy of your transcript?

10 MR. STAUDAHER: Page 20 for counsel.

11 BY MR. STAUDAHER:

12 Q And go back one page and read part of that
13 page, too, but the page 20 is the one I'm interested in you
14 reading.

15 A I said with the use of gowns he did yell.

16 Q Okay. So tell us about that. What was he
17 yelling about?

18 A I don't remember.

19 Q But he was yelling about people using gowns?

20 A Yes.

21 Q Was there any ever -- was there ever any issue
22 about not changing things out, being scolded -- and I'm not
23 talking about you necessarily you being scolded for this. If
24 you're present when it happens to someone else, that's fine,
25 too. But Dr. Desai yelling at anybody about, you know, not

1 changing things or using too much of anything, anything like
2 that?

3 A Not that I remember.

4 Q Did you ever hear complaints about that with
5 Desai related to the other techs?

6 A I mean, complaints, yeah, I heard. But did I
7 ever pay attention to them or question it, no.

8 Q I want to specifically ask you a couple things
9 about Ronald Lakeman. Do you see him in court today?

10 A Yes.

11 Q Can you point to him and describe something
12 that he's wearing for the record, please?

13 A Orange or pink shirt.

14 MR. STAUDAHER: Would the record reflect the
15 identify of Mr. Lakeman?

16 THE COURT: It will.

17 BY MR. STAUDAHER:

18 Q Mr. Lakeman and propofol. Did you ever see
19 him reusing propofol on -- from one patient to another?

20 A No, I didn't pay attention. Like propofol
21 itself? No.

22 Q Yeah, the drug. Was it -- you know, it came
23 in -- you remember it coming in bottles?

24 A Yes.

25 Q Did you ever see the bottles going -- him

1 using a bottle on a patient and then using that bottle on
2 another patient?

3 MR. SANTACROCE: Asked and answered.

4 THE COURT: Overruled.

5 Did you ever see that?

6 THE WITNESS: No, I don't remember.

7 BY MR. STAUDAHER:

8 Q Did you ever see him specifically reuse a
9 propofol bottle and syringe on a patient, the same patient?
10 The same bottle, same patient, go into it multiple times with
11 a syringe?

12 A Same patient, yes.

13 Q So what -- and I want to be clear on this.
14 That bottle of propofol, syringe/needle combination goes into
15 the propofol, draws out medication, goes into the patient?

16 A Yes.

17 Q Then takes that same syringe and goes back
18 into the bottle of propofol during that same patient?

19 A With the same patient, yes.

20 Q Now, you said that you didn't -- did you see
21 -- when you didn't see the bottle going from patient to
22 patient, did you pay attention to that, or did you know?

23 A I didn't pay attention to that.

24 Q But at least the sort of reuse within a single
25 patient, you saw that?

1 A Yes.

2 Q Now, the people that you actually worked with
3 the most as far as CRNAs, who were they?

4 A It was Ronald Lakeman and Linda Hubbard.

5 Q And your observations of Ronald Lakeman, the
6 thing you just described with reuse of the same syringe into
7 the same bottle of propofol on the same patient, was that
8 something standard that he did most of the time?

9 A That I noticed? Yes.

10 Q So this wasn't just something that happened
11 one time, this was a regular thing for him?

12 A With the same patient, yes.

13 Q Now, Dr. Desai, you saw him do some
14 procedures; correct?

15 A Yes.

16 Q When he did procedures, were you the tech that
17 was dealing with the scope during a procedure?

18 A If I was in the room at that time, yes.

19 Q So when Dr. Desai did the procedures, at the
20 end of the procedure when he took the scope out, did he do it,
21 I mean, like the other doctors? I'm talking about speed of
22 taking out the scope.

23 A Dr. Desai was a little bit faster than the
24 other -- the other doctors, yes.

25 Q Okay. In fact, was -- did you have to take

1 special care with Dr. Desai with regard to when that scope
2 came out?

3 A Yes, because of the speed you paid attention.

4 Q Okay. What would happen when the scope came
5 out of the patient sometimes?

6 A Whatever -- I'm sorry. Say that again?

7 Q When Dr. Desai would take the scope out of the
8 patient, and we're talking about the speed --

9 A Uh-huh.

10 Q -- what would happen sometimes?

11 A If we were doing a colonoscopy, whatever was
12 in there would come out with it.

13 Q Okay. Would that -- would it end up any place
14 in the room, on you, anyplace else?

15 A On the chuck, on the gurney, sometimes on the
16 floor.

17 MR. STAUDAHNER: I pass the witness, Your Honor.

18 THE COURT: All right. Cross.

19 CROSS-EXAMINATION

20 BY MR. SANTACROCE:

21 Q You talked about -- good afternoon. I'm
22 sorry.

23 A Hello.

24 Q I didn't introduce myself. I'm Rick
25 Santacroce. I represent Mr. Lakeman. You talked about the

1 procedure that Mr. Lakeman used in drawing propofol; correct?

2 A Yes.

3 Q And you never -- you said you never saw him
4 reuse the same bottle on a different patient; correct?

5 A Yes.

6 Q Because you weren't paying attention to that;
7 is that correct?

8 A Yes.

9 Q But you were paying attention to him using a
10 syringe on a patient, then going into the propofol bottle and
11 using it again if that patient needed it; correct?

12 A Yes.

13 Q You also worked with other CRNAs; correct?

14 A Yes.,

15 Q Linda Hubbard?

16 A Yes.

17 Q Tell me about your relationship with Linda
18 Hubbard.

19 A We didn't get along.

20 Q In fact, you said that when she got terminated
21 it was the happiest day that you -- of your life, wasn't it?

22 A Yes, I did.

23 Q Tell me, you also worked with Keith Mathahs;
24 correct?

25 A Keith Mathahs, I didn't really work with him

1 that much.

2 Q Well, I'm -- September 21st your name appears
3 on the first three procedures that Keith Mathahs did.

4 A Uh-huh.

5 Q So you did work with Keith Mathahs?

6 A Oh, yes, I did. Not as much as Ronald Lakeman
7 or Linda.

8 Q And you testified in your interview with Metro
9 basically Mathahs used the same procedure as Mr. Lakeman;
10 correct?

11 A Yes.

12 Q And you also said that there was no swapping
13 of propofol from room to room; correct?

14 A Meaning carrying the propofol to the next
15 room?

16 Q Right.

17 A Yes.

18 Q There was not?

19 A No.

20 Q You also said that you never witnessed the
21 CRNA leave in the middle of a procedure when a patient was
22 sleeping and go to another room to perform a procedure; isn't
23 that correct?

24 A Yes.

25 Q So they never did that?

1 A Not when I was in the rooms, yes.

2 Q Who would bring the patients into the

3 procedure room?

4 A Inside the rooms?

5 Q Yes.

6 A The techs.

7 Q And who would wheel the patient to the

8 recovery room?

9 A The techs.

10 Q And I don't recall if you worked in pre-op or

11 not. Can you just tell me if you did?

12 A In the recovery area?

13 Q No, in pre-op.

14 A Pre-op, as in --

15 Q When they came in and got the IVs.

16 A No.

17 Q You didn't ever work in that area?

18 A No, not in the IVs.

19 Q Some of the other GI tech did, though;

20 correct? If you know.

21 A Only one.

22 Q Okay. You worked in post-op?

23 A Yes.

24 Q And what were your functions in post-op?

25 A Post-op meaning the recovery area?

1 Q Yes.

2 A Just making -- monitoring their blood pressure
3 and making sure they're coming to from the propofol fine.

4 Q And what would you look for in those
5 instances?

6 A Just their blood pressure, if it's too high or
7 too low, make sure the nurse knows. And if they're dizzy to
8 notify the nurse.

9 Q Would you be responsible for monitoring their
10 vital signs?

11 A Yes, that too.

12 Q And that was done -- how many times would you
13 monitor their vital signs before they were discharged?

14 A It was -- I know it was 20 minutes in the
15 recovery area. Just how many times, I just don't remember.

16 Q Do you make that 20 minutes up?

17 A No, I don't make -- I mean, it's whatever the
18 -- do I make up the 20 minutes? No.

19 Q Yeah, I mean, is it 20 minutes for everybody,
20 or is that really the time that they spent in the recovery
21 room?

22 A I mean, if one patient takes longer to come
23 out of it, I can't rush him 20 minutes out, no. Because for
24 every patient it is different, yes.

25 Q But the minimum would be 20 minutes; correct?

1 A Correct.

2 Q And that's because you had to monitor their
3 vital signs at least three or four times; correct?

4 A Correct.

5 Q And the machine only recorded it every five
6 minutes; correct?

7 A Yes.

8 Q So at minimum it would be 20 minutes in the
9 recovery room, maybe longer?

10 A [Nods head yes]. Correct.

11 Q You need to answer.

12 A Yes.

13 Q Okay. And that was dependent upon your
14 observation of the vital signs and how they were coming out of
15 the anesthesia?

16 A Yes.

17 Q And if you had a problem in the recovery room
18 with this person in anesthesia, who would you go to?

19 A The nurse.

20 Q The RN or the CRNA?

21 A The RNs.

22 Q And then the RNs, if you had an emergency,
23 would contact the CRNAs; correct?

24 A Correct.

25 Q And the procedure rooms were in close

1 proximity to the recovery room?

2 A Yes.

3 Q You know, when I was reading your interview
4 with Metro, I kind of felt, and correct me if I'm wrong, you
5 were kind of pressured to give that interview. Is that fair?

6 A No, it wasn't pressured. It was just more of
7 at that time being the stress of, you know, everything that
8 was going on.

9 Q Well, you didn't want them to know where you
10 were currently working; correct?

11 A Because I didn't want it to affect anything
12 where I was at. Of course.

13 Q And so you were concerned about telling them
14 where you're -- who your current employer was?

15 A Yes.

16 Q And did you also feel pressured into giving
17 them certain answers?

18 A No.

19 Q So you testified to them truthfully?

20 A Yes.

21 Q And you testified here truthfully --

22 A Yes.

23 Q -- is that fair? Thank you.

24 MR. SANTACROCE: I have nothing further.

25 THE COURT: Ms. Stanish.

1 MS. STANISH: I'll be brief and before 5:00.

2 CROSS-EXAMINATION

3 BY MS. STANISH:

4 Q Good afternoon.

5 A Hello.

6 Q My name is Margaret Stanish. I represent Dr.
7 Desai. Do you get along with Dr. Desai?

8 A Yes, I did.

9 Q And is it fair -- is it fair to say that if he
10 did yell at someone it was because someone was doing something
11 concerning to him?

12 A Yes.

13 Q Did he yell at you?

14 A No, I don't recall him yelling at me.

15 Q Did you have a good working professional
16 relationship with him?

17 A Yes, I did.

18 Q And can you say that about other people in the
19 clinic that you observed interacting with him?

20 A Meaning my colleagues or --

21 Q Correct.

22 A -- the doctors?

23 Q Your colleagues.

24 A Well, we worked fine.

25 Q And just to clarify a point, you worked in the

1 cleaning room during the lunch breaks?

2 A Yes.

3 Q So how long -- how long of a duration would
4 you being doing that function?

5 A 30 minutes.

6 Q 30 minutes?

7 A Uh-huh.

8 Q And am I correct in understanding that during
9 the lunch break there is only one CRNA -- there's only one
10 room functioning, one procedure room being used during the
11 lunch time?

12 A Yes, one at a time. Yes.

13 Q So are you really cleaning that many scopes
14 when you're in the lunch -- during the lunchroom time? Or,
15 I'm sorry, when you're relieving people in the cleaning room
16 during lunch?

17 A Not as much as the other techs, no.

18 Q So because you're only in there for a half
19 hour, you wouldn't have a need to test the machine or change
20 the solution during that half hour?

21 A No.

22 Q Do you feel like you were -- strike that. The
23 CRNAs would only go into the other procedure room if they were
24 breaking the other CRNA for lunch; correct?

25 A Yes.

1 Q And as far as bathroom breaks, if a CRNA
2 needed to go to the bathroom, would there be enough time for
3 them to do that between patients?

4 A During a lunch break, or just in general?

5 Q No, in -- aside from the lunch break.

6 A Aside from the lunch break, if the doctor is
7 in the other room, if the other room is not being used and the
8 CRNA -- you have time to go to the bathroom until your case is
9 ready.

10 Q Right. And what I was trying to get at, the
11 CRNA didn't have to go into the other room and substitute for
12 someone who had to go to the restroom.

13 A I don't remember if that happened. I don't
14 remember.

15 Q Do you recall telling the police when you gave
16 that statement that the time -- during the time to take
17 bathroom breaks it was between patients so they don't change
18 rooms?

19 A Yes.

20 Q Did other doctors get impatient or yell when
21 things were not ready besides Dr. Desai?

22 A Yes.

23 Q And just to clarify a point on the gown, Dr.
24 Desai didn't want people reusing the gown that was made out of
25 material; correct?

1 A Yes, the button up ones.

2 Q But you could use the -- what was it, the tech
3 gown? Is that what you described it as, or a paper gown,
4 plastic?

5 A It was a plastic gown. We could reuse -- I --
6 we reused it.

7 Q He didn't have a problem with you taking off
8 -- ripping off those and putting on another one?

9 A No.

10 Q And you would use that to cover the nicer
11 gown, in fact?

12 A Yes.

13 Q With regards to Linda Hubbard, was her use of
14 -- did you observe how she used the propofol?

15 A I did, and I said that she usually had hers
16 ready, like in syringes ready.

17 Q So she pre-filled the syringes?

18 A Yes.

19 Q That's all I have. Oh. Oh, there was one
20 more question. I'm sorry. When doctors are ending the
21 colonoscopy procedure and taking out the scope, is -- is there
22 oftentimes material being discharged from the patient's
23 rectum?

24 A Yes.

25 Q It's just kind of a gross procedure overall;

1 correct?

2 A Yes.

3 Q And so when you say that Dr. Desai would pull
4 out the -- the scope and sometimes fecal material would come
5 out, that would occur when other doctors removed the scope, as
6 well?

7 A Yes, it did.

8 Q Where are you working -- where did you work
9 after leaving the clinic?

10 A At Dr. Hykal's (phonetic) Digestive Disease
11 Center.

12 Q And is it -- is there -- is it fair to say
13 that in the Las Vegas area, especially during this time frame
14 when you're in working for the gastro center, that there are
15 very few, if any, formal educational training programs for
16 techs, if you know?

17 A I don't know.

18 Q Is it -- is it your experience that techs are
19 normally trained on the job?

20 A Yes, for this kind of work, yes, trained on
21 the job. You don't need a license to be a GI tech.

22 Q Right. And you don't need a degree?

23 A No.

24 Q You don't need a certificate?

25 A No, you do not to be a GI tech.

1 Q And is it unusual in your experience that GI
2 techs are taken from other, perhaps, administrative areas of
3 the clinic and trained to be GI techs?

4 A Yes.

5 MS. STANISH: I have nothing further.

6 THE COURT: Redirect?

7 MR. STAUDAHER: Just one.

8 REDIRECT EXAMINATION

9 BY MR. STAUDAHER:

10 Q Regarding the whole issue of the scopes coming
11 out and Dr. Desai and the material coming out as well. You
12 said sometimes fecal material would come out with some of the
13 other doctors as well; right?

14 A Yes.

15 Q When they took the scopes out, did they take
16 them out like Dr. Desai did with the speed that he did?

17 A No.

18 Q When the stuff came out of the patients with
19 those doctors, would it splatter onto the gurney and the floor
20 and so forth like it did with Dr. Desai?

21 A Some did.

22 Q On a -- on a regular basis would that happen
23 with the other doctors, or just with Dr. Desai?

24 A On a regular basis, not with all the doctors,
25 no.

1 Q With Dr. Desai, though?

2 A Yes.

3 Q Thank you.

4 THE COURT: Any recross?

5 MR. SANTACROCE: No.

6 MS. STANISH: No, Your Honor.

7 THE COURT: Any juror questions for this witness?

8 No? No juror questions?

9 All right. Ma'am, thank you for your testimony.

10 Please don't discuss your testimony with anyone else who may
11 be a witness in this case. Thank you and you are excused.

12 All right. We'll go ahead and take our even recess
13 at this point, ladies and gentlemen. We'll reconvene tomorrow
14 morning at 9:30. And just to give you a heads up for the rest
15 of the week we'll be starting probably at 10:30 on Thursday.
16 And then I heard a rumor that you folks wanted to leave early
17 on Friday. Is that true? It's not just Kenny trying to get
18 out of here early? It is Kenny.

19 So we'll probably end around 12:30 or 1:00 on Friday
20 for the Memorial Day weekend just to give everyone a heads up.
21 And then Wednesday of next week will be a later start for you
22 folks as well, but I don't know exactly what time we'll be
23 starting on Wednesday, but that'll be a later start, as well.
24 Possibly after lunch just to give you folks some planning, I
25 guess, opportunities.

1 Having said that, we'll see you all back here
2 tomorrow at 9:30. Before I excuse you I must admonish you
3 again that you're not to discuss the case or anything relating
4 to the case with each other or with anyone else. You're not
5 to read, watch, or listen to any reports of or commentaries on
6 this case, person or subject matter relating to the case. Do
7 not do any independent research by way of the Internet or any
8 other medium. And please do not form or express an opinion on
9 the trial. If you'd all place your notepads in your chairs
10 and follow the bailiff through the rear doors.

11 (Jury recessed at 4:48 p.m.)

12 THE COURT: It's this Thursday; right? It was this
13 Thursday the juror had the situation; right?

14 MS. WECKERLY: That's -- that was my --

15 THE COURT: So that'll be 10:30 for this Thursday.

16 MS. WECKERLY: Okay. Thank you.

17 (Court recessed for the evening at 4:49 p.m.)
18
19
20
21
22
23
24
25

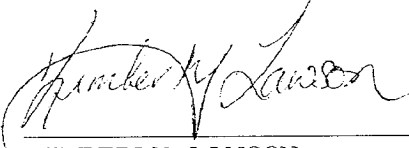
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

**KARR REPORTING, INC.
Aurora, Colorado**


KIMBERLY LAWSON

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
SEP 02 2014 09:05 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

| | | |
|-----------------------|---|----------------|
| DIPAK KANTILAL DESAI, |) | CASE NO. 64591 |
| |) | |
| Appellant, |) | |
| |) | |
| vs. |) | |
| |) | |
| THE STATE OF NEVADA, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

APPELLANT'S APPENDIX VOLUME 15

FRANNY A. FORSMAN, ESQ.
Nevada Bar No. 000014
P.O. Box 43401
Las Vegas, Nevada 89116
(702) 501-8728

RICHARD A. WRIGHT, ESQ.
Nevada Bar No. 000886
WRIGHT, STANISH & WINCKLER
300 S. Fourth Street, Suite 701
Las Vegas, Nevada 89101

Attorneys for Appellant

STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar No. 004352
200 Lewis Avenue
Las Vegas, Nevada 89155
(702) 671-2750
Attorney for Respondent

INDEX TO APPENDIX VOLUMES 1 through 41

| <u>DOCUMENT</u> | <u>VOL.</u> | <u>PAGE(S)</u> |
|--|--------------------|-----------------------|
| Indictment | 1 | 000001-000042 |
| Amended Indictment | 1 | 000043-000084 |
| Court Minutes 7/21/10 | 1 | 000085 |
| Court Minutes 2/08/11 | 1 | 000086 |
| Finding of Competency | 1 | 000087-000090 |
| Recorder's Transcript - Hearing: Video Deposition Tuesday, March 20, 2012 | 1 | 000091-000129 |
| Indictment (C-12-283381 - Consolidated Case) | 1 | 000130-000133 |
| Second Amended Indictment | 1 | 000134-000176 |
| Third Amended Indictment | 1 | 000177-000212 |
| Defendant Desai's Motion and Notice of Motion for Competency Evaluation | 1 | 000213-000229 |
| Recorder's Transcript - Hearing Re: Defendant Desai's Motion for Competency Evaluation Status Check: Experts/Trial Readiness (All) Tuesday, January 8, 2013 | 1 | 000230-000248 |
| Fourth Amended Indictment | 2 | 000249-000284 |
| Notice of Motion and Motion to Use Reported Testimony | 2 | 000285-000413 |
| Reporter's Transcript Re: Status Check: Experts (All) Thursday, March 7, 2013 | 2 | 000414-000440 |

| <u>DOCUMENT</u> | <u>VOL.</u> | <u>PAGE(S)</u> |
|--|--------------------|-----------------------|
| Defendant Desai's Opposition to State's Motion to Admit Foreign Documents Relating to Rodolfo Meana | 2 | 000441-000445 |
| Order | 2 | 000446-000449 |
| Court Minutes 3/21/13 | 2 | 000450 |
| Defendant Desai's Opposition to State's Motion to Use Reported Testimony | 2 | 000451-000454 |
| Court Minutes 3/26/13 | 2 | 000455 |
| Independent Medical Evaluation, 4/14/13 Filed Under Seal - Separately | 2 | 000456 |
| Reporter's Transcript - Calendar Call (All) State's Motion to Admit Evidence of Other Crimes Tuesday, April 16, 2013 | 2 | 000457-000497 |
| Fifth Amended Indictment | 3 | 000498-000533 |
| Reporter's Transcript - Jury Trial Day 7 Friday, May 3, 2013 | 3 | 000534-000622 |
| Reporter's Transcript - Jury Trial Day 8 Monday, May 6, 2013 | 3 & 4 | 000623-000773 |
| Reporter's Transcript - Jury Trial Day 9 Tuesday, May 7, 2013 | 4 & 5 | 000774-001016 |
| Reporter's Transcript - Jury Trial Day 10 Wednesday, May 8, 2013 | 5 | 001017-001237 |
| Reporter's Transcript - Jury Trial Day 11 Thursday, May 9, 2013 | 6 & 7 | 001238-001517 |

| <u>DOCUMENT</u> | <u>VOL.</u> | <u>PAGE(S)</u> |
|--|--------------------|-----------------------|
| Reporter's Transcript - Jury Trial Day 12 Friday, May 10, 2013 | 7 & 8 | 001518-001784 |
| Reporter's Transcript - Jury Trial Day 13 Monday, May 13, 2013 | 8 & 9 | 001785-002061 |
| Reporter's Transcript - Jury Trial Day 14 Tuesday, May 14, 2013 | 9 & 10 | 002062-00 |
| Reporter's Transcript - Jury Trial Day 15 Wednesday, May 15, 2013 | 10 & 11 | 002303-002494 |
| Reporter's Transcript - Jury Trial Day 16 Thursday, May 16, 2013 | 11 & 12 | 002495-002713 |
| Reporter's Transcript - Jury Trial Day 17 Friday, May 17, 2013 | 12 & 13 | 002714-002984 |
| Reporter's Transcript - Jury Trial Day 18 Monday, May 20, 2013 | 13 & 14 | 002985-003247 |
| Reporter's Transcript - Jury Trial Day 19 Tuesday, May 21, 2013 | 14 & 15 | 003248-3565 |
| Reporter's Transcript - Jury Trial Day 20 Wednesday, May 22, 2013 | 15 & 16 | 003566-003823 |
| Reporter's Transcript - Jury Trial Day 21 Thursday, May 23, 2013 | 16 & 17 | 003824-004014 |
| Reporter's Transcript - Jury Trial Day 22 Friday, May 24, 2013 | 17 | 004015-004185 |
| Reporter's Transcript - Jury Trial Day 23 Tuesday, May 28, 2013 | 18 | 004186-004384 |

| <u>DOCUMENT</u> | <u>VOL.</u> | <u>PAGE(S)</u> |
|--|--------------------|-----------------------|
| Reporter's Transcript - Jury Trial Day 24 Petrocelli Hearing Wednesday, May 29, 2013 | 19 | 004385-004510 |
| Reporter's Transcript - Jury Trial Day 24 Afternoon Session Wednesday, May 29, 2013 | 20 | 004511-004735 |
| Reporter's Transcript - Jury Trial Day 25 Thursday, May 30, 2013 | 21 | 004736-004958 |
| Reporter's Transcript - Jury Trial Day 26 Friday, May 31, 2013 | 22 | 004959-005126 |
| Reporter's Transcript - Jury Trial Day 27 Friday, June 3, 2013 | 22 & 23 | 005127-005336 |
| State's Exhibit 18 - Meana Death Certificate Admitted 6/3/13 | 23 | 005337-005345 |
| Reporter's Transcript - Jury Trial Day 28 Tuesday, June 4, 2013 | 23 & 24 | 005346-005611 |
| Reporter's Transcript - Jury Trial Day 29 Wednesday, June 5, 2013 | 24 & 25 | 005612-005885 |
| Reporter's Transcript - Jury Trial Day 30 Thursday, June 6, 2013 | 25 & 26 | 005886-006148 |
| Reporter's Transcript - Jury Trial Day 31 Friday, June 7, 2013 | 27 & 28 | 006149-006430 |
| Reporter's Transcript - Jury Trial Day 32 Monday, June 10, 2013 | 28 | 006431-006641 |
| Reporter's Transcript - Jury Trial Day 33 Tuesday, June 11, 2013 | 29 & 30 | 006642-006910 |

| <u>DOCUMENT</u> | <u>VOL.</u> | <u>PAGE(S)</u> |
|---|--------------------|-----------------------|
| Reporter's Transcript - Jury Trial Day 34 Wednesday, June 12, 2013 | 30 & 31 | 006911-007143 |
| Reporter's Transcript - Jury Trial Day 35 Thursday, June 13, 2013 | 31 | 007144-007382 |
| Reporter's Transcript - Jury Trial Day 36 Friday, June 14, 2013 | 32 | 007383-007619 |
| Reporter's Transcript - Jury Trial Day 37 Monday, June 17, 2013 | 33 | 007620-007827 |
| State's Exhibit 228 - Table 20-1 - Modes of Transmission and Sources of Infection Considered Admitted 7/17/13 | 33 | 007828 |
| Reporter's Transcript - Jury Trial Day 38 Tuesday, June 18, 2013 | 34 | 007829-008038 |
| Reporter's Transcript - Jury Trial Day 39 Wednesday, June 19, 2013 | 35 | 008039-008113 |
| Reporter's Transcript - Jury Trial Day 40 Thursday, June 20, 2013 | 35 & 36 | 008114-008361 |
| Reporter's Transcript - Jury Trial Day 41 Friday, June 21, 2013 | 36 & 37 | 008362-008537 |
| Reporter's Transcript - Jury Trial Day 42 Monday, June 24, 2013 | 37 & 38 | 008538-008797 |
| Reporter's Transcript - Jury Trial Day 43 Tuesday, June 25, 2013 | 38 | 008798-009017 |
| Reporter's Transcript - Jury Trial Day 44 Wednesday, June 26, 2013 | 39 | 009018-009220 |

| <u>DOCUMENT</u> | <u>VOL.</u> | <u>PAGE(S)</u> |
|--|--------------------|-----------------------|
| Reporter's Transcript - Jury Trial Day 45 Wednesday, June 27, 2013 | 39 & 40 | 009221-009473 |
| Defendant's Proposed Instruction No. 2 | 41 | 009474-009475 |
| Defendant's Proposed Instruction No. 3 | 41 | 009476 |
| Defendant's Proposed Instruction No. 4 | 41 | 009477 |
| Defendant's Proposed Instruction No. 5 | 41 | 009478 |
| Instructions to the Jury | 41 | 009479-009551 |
| Verdict | 41 | 009552-009559 |
| Reporter's Transcript - Sentencing Hearing Thursday, October 24, 2013 | 41 | 009560-009583 |
| Judgment of Conviction | 41 | 009584-009589 |
| Amended Judgment of Conviction | 41 | 009590-009595 |
| Notice of Appeal | 41 | 009596-009600 |

1 THE COURT: What about the vital signs?

2 THE WITNESS: Vital signs were taken off of the
3 monitor sheet from the procedure.

4 BY MR. SANTACROCE:

5 Q And you wouldn't pre-fill those out until you
6 actually got into the procedure room with the monitor; isn't
7 that correct?

8 A Right. Right. Because we didn't have a
9 monitor in the pre-op area.

10 Q So the only thing that was filled out, at
11 least by the pre-op nurse, was this information up here, and
12 you would fill out this stuff in here; correct?

13 A I would fill out, yeah, the height and weight
14 and the vital signs.

15 Q Whose initials are these right here?

16 A I believe this is my signature, the doctor --
17 I don't know. I can't remember who that is.

18 Q Okay. I'm just talking about the RN's
19 signature. Is that your signature?

20 A Yes.

21 Q And it's your testimony, at least for Patty
22 Aspinwall, that this patient was not pre-charted; isn't that
23 correct? In other words, you didn't -- you didn't fill out
24 any of the vital signs until she was actually in the procedure
25 room; isn't that correct?

1 A Yes.

2 Q There's a time -- there's a time up here. See
3 that time right there I'm pointing to?

4 A Yes.

5 Q Who put that time in?

6 A I think I did based on the strip that was
7 pulled from the monitor.

8 Q And what would this time indicate?

9 A Well, it says pre-procedure assessment. So we
10 had -- that's when we would go five minutes back in time, I
11 believe.

12 Q Okay.

13 A It's hard to remember all that what was what
14 and what was --

15 Q Okay. But this was prior to the procedure
16 being started; correct?

17 A This 10:25?

18 Q Yes.

19 A I think it was after.

20 Q Okay. Well, I need you to tell me if you
21 know. I don't want you to guess.

22 A Okay.

23 Q If you know, fine. If you don't know, just
24 tell me you don't know and we'll go from there.

25 A I don't remember.

1 Q Okay. But you did put that time in; correct?

2 A It looks like my -- my printing.

3 Q Okay. Now, I want -- I want to go on a little
4 bit further. I believe your testimony, or at least you gave an
5 interview to Metro Police; correct?

6 A Yes.

7 Q And you told Metro Police Department that
8 there was never any pre-charting before the procedure room;
9 correct?

10 A I did.

11 Q Okay. Now, can you tell me what this document
12 is?

13 MR. SANTACROCE: And I'm referring to Bates stamp
14 003306 for counsel.

15 BY MR. SANTACROCE:

16 Q Can you tell me --

17 A I'm sorry. I -- I didn't understand the
18 question.

19 THE COURT: What is that?

20 THE WITNESS: What is this? This is the procedure
21 room paperwork.

22 BY MR. SANTACROCE:

23 Q And this is paperwork you would fill out?

24 A I would fill out part of it.

25 Q Look at the signature for RN on the bottom.

1 A Yes.

2 Q Is that your signature?

3 A Yes.

4 Q So you would have filled this document out; is
5 that fair to say?

6 A Yes.

7 Q Okay. Tell me what's on it.

8 A The doctor's name, my -- the nurse's name, the
9 technician, the CRNA. We had to write how much propofol
10 anesthesia gave, where the IV was put, the reason the patient
11 had the procedure, the post-op diagnosis, when the procedure
12 started --

13 Q Okay.

14 A -- and ended.

15 Q Where would you get that time?

16 A That was off the monitor off the strip.

17 Q Okay. So going back to Bates 003305, you see
18 that this procedure assessment time was 10:25; correct?

19 A Yes.

20 Q And then on the next nurse's notes, which are
21 your notes, you take off of the electronic monitor the
22 procedure time started at 10:30; correct?

23 A Yes.

24 Q Is that accurate?

25 A I took it off the heart monitor strip, so,

1 yeah.

2 Q Okay. And then what else do we find on here
3 in your writing?

4 A The doctor's name, my name, the nurse that was
5 in recovery's initials, but she initialed that it looks like.

6 Q Do you know whose initials those are?

7 A It's Geraldine Whittaker.

8 Q Okay. And this is the recovery room nurse;
9 correct?

10 A Yes.

11 Q Okay. So after you fill this chart out, it
12 would be placed on the patient's bed, the patient would be
13 relative to the recovery room; correct?

14 A Yes.

15 Q With the chart?

16 A Yes.

17 Q Then the next nurse that sees that patient
18 fills in what they're responsible for; correct?

19 A Yes.

20 Q Okay. There's another time on this document,
21 this procedure end time 10:48. Do you see that?

22 A Yes.

23 Q Who wrote that in?

24 A I did.

25 Q So you wrote the procedure start time and you

1 wrote the procedure end time; correct?

2 A Yes.

3 Q And you took that time off of the monitor
4 also?

5 A Yes.

6 Q Okay. So then you see these written notes
7 here?

8 A Yes.

9 Q Who -- who wrote those?

10 A I did.

11 Q And what does that say?

12 A The patient positioned themselves on their
13 left side, their vitals were stable, they were able to
14 tolerate the procedure, and they went to recovery.

15 Q So it sounds like you were pretty
16 conscientious about this stuff. I mean, you wrote down
17 specifically certain things about this patient, specific to
18 this patient; isn't that correct?

19 A Yes.

20 Q And it would be fair to say you were
21 conscientious in doing your job?

22 A Yes.

23 Q So now the patient gets rolled into the
24 recovery room, and Ms. Whitaker takes over from there;
25 correct?

1 A Yes.

2 Q And you testified that you worked in the
3 discharge area for a period of time; isn't that correct?

4 A Yes.

5 Q I want you to tell me what goes on after this
6 patient now gets moved into the recovery room.

7 A The patient is hooked up to another monitor so
8 their vitals are taken and they're watched. We watch the
9 patients and tell them to make sure they're passing gas so
10 they don't have cramping after the procedure. And you --

11 Q Now, I want to show you what's been marked as
12 State's Exhibit 103. And this purports to be a diagram of the
13 Shadow Lane facility. Is that how you saw it?

14 A Yes.

15 Q And you had Procedure 1, Procedure 2; correct?

16 A Yes.

17 Q And this is the patient area here?

18 A Yes.

19 Q Recovery room, what we -- what we've been
20 referring to as the recovery room?

21 A Yes.

22 Q And how many beds would be here or how many
23 gurneys would be lined up?

24 A I think there was four or five.

25 Q So they would come out of the procedure room

1 and just be a few feet away; correct?

2 A Yes.

3 Q So if you had any problem with a patient
4 coming off of the anesthesia, you would have access to CRNA
5 really quick; isn't that correct?

6 A Yes.

7 Q Now, in the recovery room area, before the
8 patient is released to go home, has to see a discharge nurse;
9 correct?

10 A Yes.

11 Q And that would have been you at some point in
12 time?

13 A Yes.

14 Q Tell me what you do to that patient at that
15 point in time.

16 A They would be brought into the discharge room.
17 You would ask them if they want their family member present
18 while they -- while you went over the instructions and
19 results. And if they wanted their family member, you'd go get
20 them.

21 Q Would there be anything that the discharge
22 nurse would write on that paperwork that we were looking at
23 where Geraldine Whitaker initialed? Let me get it for you so
24 you --

25 A Okay.

1 Q -- can look at it. You want to hit that
2 screen on the bottom again since there's red marks? Thank
3 you. Anything on here that the discharge nurse would put?

4 A I don't -- the only thing, if she would put
5 anything, I think was the post-procedure diagnosis. If we
6 didn't fill it in, if we didn't have the report, like if we
7 didn't have the report in the room and knew what the diagnosis
8 was.

9 Q Okay. But I want you to look at this specific
10 document. Is there anything on here that Ms. Whitaker put
11 down?

12 A Oh, Ms. Whitaker? She put her initials.

13 Q Okay. And what does those initials signify?

14 A That the patient was handed off from the
15 procedure room to -- to recovery.

16 Q Now, I want you to look at these documents.
17 Well, actually, let's look at this -- this document right
18 here. Can you tell me what this document is? And I'm
19 referring to 3307. Does this help? You tell me --

20 A Yeah.

21 Q -- if you can't see.

22 A Okay. All right. This is after the
23 procedure.

24 Q Okay. And what is this document for?

25 A Well, it's the post-op assessment it says up

1 here, so saying that --

2 Q I want -- I'm sorry. Were you done answering?

3 A Yeah, it's post-op assessment.

4 Q I want to direct your attention to this line
5 right here. Again, that would be Geraldine Whitaker's
6 initials; correct?

7 A Yes.

8 Q The discharge nurse for Patty Aspinwall;
9 correct?

10 A Yes.

11 Q And what does this mean?

12 A Discharge criteria met, that the patient was
13 stable to go home.

14 Q What is this time here? Would that be the
15 discharge time?

16 A Yes.

17 Q So your procedure time started at 10:25;
18 correct?

19 A Yes.

20 Q And this patient was actually discharged at
21 11:09; correct?

22 A Yes.

23 THE COURT: We need a break.

24 MR. SANTACROCE: Was it --

25 THE COURT: Sorry to --

1 MR. SANTACROCE: -- something I said?

2 THE COURT: -- interrupt you. That too. But
3 besides that, we need a break. Some of the jurors -- and
4 actually I wanted a break, so I'm happy for that.

5 Ladies and gentlemen, let's just go and take about
6 10 minutes. That'll put us at 2:45. And during the break you
7 are reminded that you're not to discuss the case or anything
8 relating to the case with each other or with anyone else.
9 You're not to read, watch, or listen to any reports of or
10 commentaries on the case, person or matter relating to the
11 case. And please don't form or express an opinion on the
12 trial. Notepads in your chairs, and follow the bailiff
13 through the rear door.

14 And, ma'am, during the break, please don't discuss
15 your testimony.

16 (Court recessed at 2:30 p.m., until 2:48 p.m.)

17 (In the presence of the jury.)

18 THE COURT: All right. Court is now back in
19 session. Everyone may be seated.

20 And, Mr. Santacroce, you may resume your
21 cross-examination.

22 MR. SANTACROCE: Thank you.

23 BY MR. SANTACROCE:

24 Q Just one last question on this discharge time,
25 11:09. Do you see those initials next to that time --

1 A Yes.

2 Q -- or notes? What does that mean? Is that
3 a.m. and a checkmark, or do you know what that means?

4 A I believe it's the nurse's initial.

5 Q Okay. All right. Now, I'm showing you
6 State's Exhibit 122. And you'll recognize that as what?

7 A The procedure room.

8 Q And if you can just draw on your screen where
9 you stood, if you can see it there. If not, I'll move it
10 over.

11 A Oh, right here.

12 Q Where?

13 A Right here.

14 Q Okay. And is there -- where is the monitor
15 and machine you were talking about where you get the times
16 off?

17 A Here.

18 Q So would you look across that and look onto
19 the monitor, or would you be standing somewhere near the
20 monitor?

21 A No, I'd be standing here.

22 Q Okay. And you could see the monitor from
23 where you were?

24 A Yeah.

25 Q And where would the CRNA be?

1 A Here.

2 Q And the doctor? And the GI tech? And that
3 was all that was in the room; correct?

4 A Yes.

5 Q Now, you said that you couldn't tell what size
6 propofol bottles were being used; correct?

7 A I think they had two different sizes.

8 Q Okay. One thing that you were emphatic on
9 when you gave your interview to the detective here was that
10 you never saw propofol go from room to room; isn't that
11 correct?

12 A Yeah, I don't -- I don't remember that.

13 Q You don't remember seeing propofol go from
14 room to room?

15 A No.

16 Q Let me show you State's Exhibit 118. Could
17 you click the screen for me again?

18 A Sure.

19 Q And can you tell me what that is?

20 A That's the recovery area right here.

21 Q And then the procedure rooms would be right
22 here?

23 A Yes.

24 Q So they're only a few feet from the patient;
25 correct?

1 A Yes.

2 Q Now, I see some monitors on the walls here.

3 The patients were hooked up to those monitors when they came
4 into the recovery room; correct?

5 A Yes.

6 Q And how long would typically a patient be in
7 the recovery room?

8 A About 20 minutes, 15, 20 minutes.

9 Q And is there some series of tests that you
10 would have to clear them on before they could be discharged?
11 In other words, would you take their vitals three times?

12 A Yes.

13 Q And that would take about 20 minutes for the
14 typical patient to be just in the recovery area?

15 A Yes.

16 Q Maybe a little longer depending on the
17 patient; correct?

18 A Yes.

19 Q And you would -- as a discharge person you
20 would make sure that that person at least was coming out of
21 the effects of the anesthesia before you discharged them;
22 correct?

23 A Yes.

24 Q And you would make sure that their vital signs
25 were stable; correct?

1 A Yes.

2 Q Now, the detectives asked you in the interview
3 about the cleanliness of the facility. Do you remember that?

4 A Yes.

5 Q And I think you said that you believe the
6 facility was clean; correct?

7 A Yeah.

8 Q And I think they asked you on a scale of 1 to
9 10 how clean was it, and you said about a 7; isn't that
10 correct?

11 A Yes.

12 Q And is that an accurate portrayal of your
13 testimony or your interview?

14 A Yeah, it wasn't disgusting, like I said, but
15 it wasn't spotless.

16 Q Okay. Well, let's take this picture here of
17 the procedure room. Is there some things in that procedure
18 room that bother you as far as cleanliness?

19 A No.

20 Q Let's look at the recovery area. Is there
21 anything in that picture or your recollection that you can
22 recall that bothers you about the cleanliness of that room?

23 A No.

24 MR. SANTACROCE: I have not further questions.

25 Thank you.

1 THE COURT: All right. Redirect.

2 MS. WECKERLY: Yes. Can I see that file, please,
3 Mr. Santacroce? Thanks.

4 REDIRECT EXAMINATION

5 BY MS. WECKERLY:

6 Q I'm going to show you some of the same charts
7 from that same file.

8 A Okay.

9 Q Okay. And this is, for the record, State's
10 Exhibit 7. And this is Bates Number 3302. Do you recognize
11 what that is?

12 A That looks like the anesthesiologist form.

13 Q Yeah, that's an anesthesia record?

14 A Yes.

15 Q And can you see at the top here these times?

16 A Yes.

17 Q What does that say?

18 A 10:30.

19 Q And that's 11?

20 A 11.

21 Q Okay. And there's actually vitals marked all
22 the way across to 11; would that be correct?

23 A Yes.

24 Q Okay. Looking at the bottom, is there a time
25 indicated there?

1 A Yes.

2 Q What is that?

3 A 10:30 to it looks like 11:01.

4 Q 31 minutes?

5 A Yes.

6 Q Okay. Now, you said that you, when you did
7 your procedures or when you did your times, you kind of
8 calculated off a tape time?

9 A Yes.

10 Q I'm putting on the overhead, this is Bates
11 Number 3308. Test how good your eyesight is.

12 A Uh-huh.

13 Q Do you see those two tapes?

14 A Yes.

15 Q Were those one of the ones that you relied
16 upon for your time?

17 A Yes, the first -- this one.

18 Q This one?

19 A Yes.

20 Q Okay. I'm going to -- you -- I cannot see it.
21 I'm going to zoom in on it, okay?

22 A Okay.

23 Q And that was -- this tape is what? This tape
24 we're looking at here.

25 A This first one is the one from the procedure

1 room.

2 Q Okay. And so here is a time. This is the
3 start; right?

4 A Yes.

5 Q Okay. So this is while the patient is in
6 there in the procedure room; is that right?

7 A Yes.

8 Q Okay. So that's 10:30 and you read it up;
9 correct?

10 A Correct.

11 Q Okay. So 10:30, and then what's the end time?

12 A 10:48.

13 Q 10:48. Not 11:01.

14 A Right.

15 Q Okay. And then this other tape time, sort of
16 flipping it the other way, are you able to read that?

17 A Yes.

18 Q Okay. And is that in the recovery area?

19 A Yes.

20 Q Okay. So for this tape to be on a record,
21 that means the patient is out of the procedure room, into the
22 recovery area, and hooked up on a new monitor; correct?

23 A Correct.

24 Q And the monitor time on here starts at what?

25 A 10:55.

1 Q Okay. But when you were doing -- when you
2 were the procedure room nurse, you said that you based
3 everything -- sorry, can you see that again -- off of -- of of
4 this tape; right?

5 A Yes.

6 Q Not this one, not the recovery tape?

7 A No.

8 Q Okay. So showing you -- this will be Bates
9 Number 3305. And looking at that tape time with a start time
10 of 10:30; correct?

11 A Yes.

12 Q So let's look at this record. Let me back
13 out. Okay. Can you see that? This is the procedure room
14 form; correct?

15 A Yes.

16 Q And this is the one where you filled out the
17 height and the weight?

18 A Yes.

19 Q And then you said you think you filled out
20 this 10:25?

21 A Yes.

22 Q Now, how is that time derived?

23 A So you went five minutes back.

24 Q Okay. So you went -- to get that, you'd go
25 minus five minutes from this 10:30.

1 A Correct.

2 Q Correct? You don't look at a clock, but you
3 base it on the tape time?

4 A Right.

5 Q Okay. So that time, no matter what it is, is
6 minus five minutes from the tape --

7 A Yes.

8 Q -- is that right? Okay. I don't want to get
9 these out of order. Now, I'm going to show you this form,
10 which is Bates Number 3306. And this is still something
11 filled out by you in the procedure room; correct?

12 A Yes.

13 Q And you said you'd fill out how much propofol
14 was given; correct?

15 A Yes.

16 Q And then you filled out who was present during
17 the procedure?

18 A Yes.

19 Q And then this is your --

20 A Yes.

21 Q -- sort of notes on -- on the patient during
22 the procedure?

23 A Yes.

24 Q And this -- this -- when would you fill this
25 out?

1 A During the procedure. Sometimes you might
2 fill it out before.

3 Q Okay.

4 A Right before the procedure.

5 Q Okay. So -- and then if something different
6 happened, you could fix it?

7 A Yes.

8 Q But there were times when these were filled
9 out before?

10 A Yes.

11 Q Okay. So this time right here where it says
12 procedure start time, you go off this -- this tape again to
13 get that?

14 A Yes.

15 Q Okay. Now I'm showing Bates Number 3307. Can
16 you see that? Are you good there seeing that?

17 A Yes.

18 Q Okay. So this is what type of form? Is this
19 in the procedure room, or have we now moved to post-op?

20 A Post-op.

21 Q Okay. And that says post-procedure assessment
22 time?

23 A Yes.

24 Q And what -- what's the time there?

25 A 10:50.

1 Q Is that your writing?
2 A I think so.
3 Q Okay. And how do you --- how would you
4 calculate that time?
5 A I think that was two minutes after the
6 procedure end time.
7 Q Okay. So you go back to your -- your tape.
8 And you're in the procedure room, so you know what that is;
9 right?
10 A Yes.
11 Q Okay. So it's plus two minutes to this
12 10:48 ---
13 A Yes.
14 Q -- is that right? Regardless of what it is,
15 we just add two and write it in.
16 A Yes.
17 Q Okay. Now, the RN is not you in post-op for
18 this patient; right? It's --
19 A Right.
20 Q -- G.W., Geraldine Whittaker?
21 A Yes.
22 Q Okay. Now, this time or this -- this is
23 filled out when, this part? Can you read that, this chart?
24 A Uh-huh.
25 Q I can bring it up if you want to look at it.

1 A Yeah, no. I --

2 Q Discharge -- it says discharge criteria met,

3 yes. And it looks like 11:09.

4 A Uh-huh. This is the discharge nurse.

5 Q Okay. What's -- who is this?

6 A It looks like it says N.V., and I can't

7 remember who had those initials.

8 Q Okay. Different signature than --

9 A Yes.

10 Q -- than this person Geraldine; correct?

11 A Yes.

12 Q Okay. And then this -- this says physician at

13 bedside, and it says, I think, 10:55; right?

14 A Yes.

15 Q Would you have filled in that time when you

16 were in the pre-op -- or in the procedure room, or was this

17 time like five minutes after?

18 A Uh-huh. Yes.

19 Q Okay. So we take 10:50, we add five minutes?

20 A Yes.

21 Q Regardless. And at 10:55 --

22 A Yes.

23 Q -- physician at bedside. Of course, if we go

24 back to our anesthesia record, they're still under anesthesia;

25 right? Because it's 11:00 that these vitals are charged;

1 right?

2 A Yeah.

3 Q Okay. But the way you were instructed was you
4 add five minutes to the post procedure time to get this
5 physician at bedside time? Is that correct?

6 A Yes.

7 Q Okay. And this discharge time, do you know
8 how -- do you remember how that -- I'm sorry. You can't see
9 that. I didn't show you. This very last time here, do you
10 know how that one was calculated?

11 A I can't remember how they calculated that.

12 Q Okay. And there's one more time on here, and
13 it says heplock DC time, okay.

14 A Uh-huh.

15 Q And it looks like it says 10:55.

16 A Yeah.

17 Q Do you know how that was calculated?

18 A Yeah, it ended up being the same time as
19 the --

20 Q Physician --

21 A -- down here. Yeah, at the physician at the
22 bedside.

23 Q Okay.

24 A And then I think they calculated a half an
25 hour after that --

1 Q To get the --
2 A -- was the discharge.
3 Q -- the real leaving time?
4 A Yeah.
5 Q Okay. So this time we add five minutes and we
6 get the physician at bedside and the heplock taken out time;
7 correct?
8 A Yes.
9 Q And then you add a half hour or so or -- and
10 then you get this last time?
11 A Yes.
12 Q And all of those were just based on --
13 A The strip.
14 Q -- the strip, not when they really happened?
15 A Right.
16 Q Okay. And is that what you -- is that what is
17 meant or what your understanding of pre-charting is?
18 A Yeah, because you were filling in those
19 times --
20 Q Before they --
21 A -- ahead of time. Yeah.
22 Q -- were moving through? Have you ever charged
23 like that since then?
24 A No.
25 Q Did you do it that way before?

1 A No.

2 Q It was unique to this place?

3 A Yes.

4 Q Thank you.

5 THE COURT: Any recross?

6 MR. SANTACROCE: Yes.

7 THE COURT: Okay.

8 RECROSS-EXAMINATION

9 BY MR. SANTACROCE:

10 Q I'm going to show you again the anesthesia
11 record.

12 A Okay.

13 Q This is filled out by the anesthesia -- the
14 CRNA; correct?

15 A Yes.

16 Q And the start time is at 10:30; correct?

17 A Yes.

18 Q And I'm going to show you your note. What
19 time was the procedure started according to your note?

20 A 10:30.

21 Q You didn't talk to the CRNA and ask him what
22 time he put down on there, did you?

23 A No.

24 Q You put 10:30 on your chart, and he would
25 write down when he started on his chart?

1 A Yes.

2 Q And it's not coincidental that they're both
3 the same time because that's the time they were started; isn't
4 that correct?

5 A Yes.

6 Q So the start times are accurate; correct?

7 A Yes.

8 Q Now, she talked to you -- the DA talked to you
9 about the strip time. You couldn't make this up, could you?

10 A No.

11 Q Because it comes from the machine; correct?

12 A Right.

13 Q And that time on the strip time coincides with
14 the other times you wrote on your charts; isn't that correct?

15 A Yes.

16 Q There was no fudging with that, was there?

17 A No.

18 MR. SANTACROCE: That's all I have.

19 THE COURT: Ms. Stanish?

20 MS. STANISH: Nothing further, Your Honor. Thank
21 you.

22 THE COURT: Ms. Weckerly?

23 MS. WECKERLY: Nothing else. Thanks.

24 THE COURT: We have a couple of juror questions. If
25 a patient has problems either in the procedure room or in the

1 recovery room and you had already filled out the chart, what
2 did you do?

3 THE WITNESS: We would cross it out and then write
4 what actually happened.

5 THE COURT: Okay. And did that happen that you had
6 to --

7 THE WITNESS: Yes.

8 THE COURT: -- do that? All right. And then how do
9 you know how much propofol was given to the patient as written
10 -- as filled in on the procedure room form?

11 THE WITNESS: I would take that off of the
12 anesthesia form. When the procedure was over, the CRNA would
13 hand you their anesthesia form to put in the chart, and the
14 amount would be on there, and then you would fill it in on
15 that --

16 THE COURT: Okay. Based on what was --

17 THE WITNESS: Yes.

18 THE COURT: -- that information?

19 Counsel approach.

20 Any other juror questions for the bailiff to
21 retrieve?

22 (Off-record bench conference.)

23 THE COURT: Regarding the nurse that was yelling at
24 Dr. Desai about the single-use biopsy forceps, did she leave
25 the endoscopy center?

1 THE WITNESS: No.

2 THE COURT: Okay. Any follow up to any of those
3 juror questions from the State?

4 MS. WECKERLY: No, thank you.

5 THE COURT: Any follow up from the defense?

6 RECROSS-EXAMINATION

7 BY MS. STANISH:

8 Q Just to clarify, did I understand you to say
9 that that nurse who was yelling was not yelling at Dr. Desai?
10 He wasn't there?

11 A I can't remember if he was there or not.

12 Q All right. Thank you.

13 THE COURT: Mr. Santacroce?

14 MR. SANTACROCE: Nothing further.

15 THE COURT: Any additional juror questions before I
16 excuse the witness? No?

17 Ma'am, thank you for your testimony. Please don't
18 discuss your testimony with anybody else who may be called as
19 a witness in this case. Thank you and you are excused.

20 And, State, call your next witness.

21 MS. WECKERLY: Orlena Harris Holleman.

22 THE COURT: Ma'am, just right up here next to me up
23 those couple of stairs, please. And then just remain standing
24 facing that lady right there who will administer the oath to
25 you.

1 ORLENA HOLLEMAN, STATE'S WITNESS, SWORN

2 THE CLERK: Thank you. Please be seated. And would
3 you please state and spell your name.

4 THE WITNESS: Orlena Holleman; O-R-L-E-N-A
5 H-O-L-L-E-M-A-N.

6 THE COURT: All right. Thank you.
7 Ms. Weckerly.

8 DIRECT EXAMINATION

9 BY MS. WECKERLY:

10 Q How are you?

11 A Good.

12 Q You used to be Ms. Harris; correct?

13 A Correct.

14 Q Okay. Back in 2006 and 2007 did you work at
15 the Endoscopy Center of Southern Nevada?

16 A Yes.

17 Q And do you recall when you started about?

18 A '06, I think it was April.

19 Q April of 2006? Is that yes?

20 A Yes.

21 Q And I'm going to bug you about saying that
22 because we're recording in here, so we have to say yes or no
23 rather than just shaking your head. Okay?

24 A Okay.

25 Q Okay. So you started in April of 2006. How

1 long did you work there?

2 A Until '08 when the facility closed.

3 Q Okay. What was your position at the facility?

4 A Gastro tech.

5 Q And is that shortened to GI tech?

6 A GI tech.

7 Q As a tech, who was it that hired you into your
8 position?

9 A It was Tonya.

10 Q Tonya Rushing?

11 A Yeah. Yes.

12 Q Yes. Did you have any training prior to
13 starting there in working as a GI tech?

14 A No.

15 Q And once you got there, did you get any kind
16 of on the job training that taught you how to do what they
17 wanted you to do?

18 A Yes.

19 Q Who ended up training you?

20 A I was trained by Christina and a guy named
21 Freddie.

22 Q A guy named Ray?

23 A Freddie.

24 Q Oh, Freddie. Do you know Christina's last
25 name?

1 A Rodriguez.

2 Q And how about Freddie?

3 A I don't know his last name.

4 Q It's been awhile; right?

5 A [Nods head yes].

6 Q What kind of -- how did -- how did they train
7 you? What did they -- what were they -- like your first day,
8 how did -- what did they do in terms of training you?

9 A I trained out in pre-op and post-op as the
10 front part where we would bring the patients back and put them
11 in the bed and get them ready for the procedure. And I -- we
12 got them ready after their procedure was over to get ready to
13 go to discharger.

14 Q Okay.

15 A She trained me to do that part.

16 Q And a GI tech has responsibilities in pre-op,
17 in the procedure room, and also in recovery. Is that fair?

18 A That's fair.

19 Q Okay. And did you work all of those areas?

20 A Yes.

21 Q And GI techs also -- there is a cleaning room,
22 right, where the scopes are cleaned?

23 A Yes.

24 Q Did techs do that, as well?

25 A Yes.

1 Q And did you do all of those four locations
2 when you were working there?

3 A Yes.

4 Q Okay. Let's start with pre-op. What, as a GI
5 tech, were your responsibilities in pre-op?

6 A You would call the patient back, and then we
7 would take them to get an IV in their room. And once they're
8 done there we would take them to the bed. And we'll just put
9 a blood pressure cuff on their arm, and they have to wait to
10 go into the procedure room.

11 Q Okay. And when you call the patient back, are
12 you the person that would put a heplock in or a needle in or
13 is that done by a nurse?

14 A That's done by a nurse.

15 Q Okay. So you call them back, kind of show
16 them where they should change their clothes and get into the
17 gown --

18 A Correct.

19 Q -- is that right? Okay. And then the nurse
20 would do the heplock typically?

21 A Yes.

22 Q And then you said you'd take them to a bed?

23 A Uh-huh.

24 Q Is that yes?

25 A Yes.

1 Q Okay. Where -- where were the beds?
2 A The beds were in little bays divided by
3 curtains.
4 Q Are these the same bays or beds that a patient
5 would go to after a procedure?
6 A Yes.
7 Q So recovery and where they're laying before
8 their procedure is the same place?
9 A Yes.
10 Q So were they on a gurney when they would be in
11 those bays?
12 A Yes.
13 Q So you'd walk them back and have them hop up
14 on a --
15 A Yes.
16 Q Okay. And then they'd wait there until it's
17 time for --
18 A To go into the -- yes.
19 Q Okay. So then would you be the person that
20 pulled them into the procedure room?
21 A I have to think about this one.
22 Q Okay. Sure.
23 A Yes.
24 Q And when they -- I think you mentioned, and I
25 might have heard you wrong, that you put a blood pressure cuff

1 on them?

2 A Correct.

3 Q Was that when they're in the pre-op area with
4 the nurse, or when they're in those bays waiting to go into
5 the procedure rooms?

6 A They were waiting to go into the procedure
7 room.

8 Q Okay. They'd have a blood pressure cuff on
9 them?

10 A Yeah.

11 Q Is that yes?

12 A Yes.

13 Q Sorry. So you pull them into the procedure
14 room and then you also, as a GI tech, worked in the procedure
15 room, as well?

16 A Yes.

17 Q As -- when you have that responsibility, what
18 is your job as the tech in the procedure room?

19 A To assist the doctor with the tools that he
20 needs to perform the procedure.

21 Q And when the patient comes in, if you're the
22 procedure room person, do you go get the patient out of the
23 recovery slash bed place and roll them in or --

24 A No.

25 Q You're already in the room?

1 A Right.

2 Q Okay. So someone else wheels the person in?

3 A Yes.

4 Q And then what do you? What's the first thing

5 you do?

6 A I don't remember exactly.

7 Q Okay. Well, what are -- do you remember

8 anything you did do, if not the order? Like did hook them up

9 to a machine or put, you know, a heart monitor on them,

10 anything like that?

11 A I'm not sure if the tech in the room did that

12 or the one that brought them into the room.

13 Q Okay. That's all right.

14 A I kind of get that confused.

15 Q Yeah, it's been --

16 A But they --

17 Q -- it's been awhile. At some point they are

18 hooked up to a monitor, though; is that right?

19 A Yes.

20 Q And as the tech, you said you're assisting the

21 doctor?

22 A Yes.

23 Q Where do you stand in relation to the doctor?

24 Are you -- are you next to him or her?

25 A Yes.

1 Q And like are you at the patient's feet or head
2 or how --

3 A It depends on the procedure because --

4 Q Yeah.

5 A -- different ways it -- you were either at the
6 feet or at the head of the patient.

7 Q Okay. Obviously, depending on which procedure
8 they're getting?

9 A Yes.

10 Q Are you watching the monitor with the doctor,
11 or are you watching the patient when it's going on.

12 A The monitor.

13 Q And while you are doing your job in the
14 procedure room, does the doctor call out things to you or
15 issue instructions, or is it pretty quiet?

16 A Yes, he calls out something, if he needs to do
17 something.

18 Q And what types of things would those be?

19 A Like if he wants to take a biopsy of an area,
20 he'll say a biopsy and we'll give him the biopsy forceps to
21 feed down the channel of the scope. Or he'll a snare if he
22 needed that to take off a polyp or something like that. Or he
23 would say a flush to -- so he could get a better view maybe if
24 there's something that he needs to see.

25 Q Okay. So you're -- are you handing this

1 equipment to the doctor?

2 A Yes.

3 Q To -- to use in whatever they're going to do?

4 A Yes.

5 Q Okay. And as you're doing that, are you
6 watching either the nurse or the CRNA at all in the room, or
7 are you -- you kind of have to be focused on the doctor?

8 A On the monitor.

9 Q On the monitor? Once the procedure is over,
10 what -- what does a GI tech do who is assigned to the
11 procedure room?

12 A Once the procedure is over, the tech gets the
13 scope and they pre-clean it there. There's a little container
14 with a solution in it, and it would suck that through the
15 scope and wipe it down, and then take the scope into the wash
16 room.

17 Q Okay. So you physically are the one who walks
18 the scope into the wash room?

19 A Yes.

20 Q The -- you said you pre-clean it in the room?

21 A Yes.

22 Q Describe what -- what that is.

23 A There's a little container, a little graduate
24 with the solution, with the enzymatic solution in that they
25 use to clean the scope in the wash room. It had some water

1 with it, it's mixed with water, and you insert the tip of the
2 scope and suck it through so it like takes whatever inside the
3 scope is out into a container that goes on the wall. And then
4 we'll just wipe down the insertion tube, and then we'll carry
5 it into the -- the scope room.

6 Q And how often was that solution that you used
7 in the room cleaned or turned over between patients?

8 A I don't remember if it was all sucked out or
9 if it was just there.

10 Q Okay. Do you remember being interviewed by
11 the police on that issue?

12 A We didn't go over that part.

13 Q Okay.

14 A So --

15 Q And maybe I'm misunderstanding it. Was there
16 -- was there a scope or a syringe that was reused in the -- in
17 the procedure room?

18 A There is a flush scope --

19 Q Okay.

20 A -- that we would flush when the doctor would
21 ask for a flush or something.

22 Q Okay. And that's -- that -- I misunderstood
23 you, then. That's during the procedure, right, if -- like
24 when they're asking for all these tools?

25 A Yeah, if they want to see, yes.

1 Q And that was the one that wasn't -- that was
2 reused, I guess?

3 A That's the one that was left. It wasn't
4 changed out with every patient. It was left in the room. But
5 then once it was used with a patient, it was thrown out.

6 Q When you were in the procedure rooms, did you
7 have a lot of time to observe the CRNAs?

8 A No.

9 Q Could you see the medication that they were
10 using at all on the patients?

11 A Not during the procedure. I don't remember --
12 I didn't pay attention to them during the procedure.

13 Q Okay. Can you describe at all? Do you
14 remember anything about what they used?

15 A They -- in the beginning -- in the beginning
16 of the day they would have a nurse take out some bottles of
17 propofol out of a cabinet.

18 Q Uh-huh.

19 A Yeah, that's the only time that I would see
20 anything with propofol.

21 Q And did you see how it was distributed at all
22 or --

23 A I think they took just a few bottles. Each --
24 each -- they would take a few bottles out.

25 Q Now, during the procedures did you ever have a

1 doctor do like a biopsy, but call out a different procedure?

2 A Yes.

3 Q Describe that.

4 A It would be like a small polyp that we would
5 take with a biopsy forcep, and instead of the doctor saying a
6 biopsy, he would say -- he would call out snare.

7 Q Who did that?

8 A Dr. Desai.

9 Q Did you ever hear any other doctor do that?

10 A No.

11 Q Do you know what the purpose was for that?

12 A No. Probably to charge more.

13 MR. SANTACROCE: Objection. Speculation.

14 THE COURT: That's sustained.

15 BY MS. WECKERLY:

16 Q He was the only doctor that you ever heard do
17 that?

18 A The only one.

19 Q How would you describe how he did procedures?

20 A He was really quick.

21 Q Quick?

22 A Yes.

23 Q Did you ever see him start a procedure before
24 the patient was under the anesthesia?

25 A Yes.

1 Q How many times would you say you saw that?

2 A I can't give a specific number, but he would
3 do it sometimes.

4 Q Okay. Did you ever hear him interact with the
5 CRNAs?

6 A No, not really.

7 Q Okay. Did he seem relaxed as he was doing the
8 procedures, or how would you describe him?

9 A He was always mad.

10 Q On the upper endoscopies there is a piece of
11 equipment that we've all learned about called a bite block.

12 A Uh-huh.

13 Q Do you know what those are?

14 A Yes.

15 Q And what was your experience with how bite
16 blocks were used at the clinic?

17 A It was -- it was standard to wash them in the
18 Medivator with the soap.

19 Q And so they were reused?

20 A Yes.

21 Q Did that policy ever change?

22 A Towards the end before the facility closed
23 when the investigation started.

24 Q Uh-huh.

25 A Then they started to throw them out.

1 Q And you were -- in this case you were
2 interviewed by the police; right?

3 A Yes.

4 Q Tell us about your first interview.

5 A Oh, I -- I didn't want to be -- I didn't want
6 to have to testify, so I just told them stuff that I thought
7 to say.

8 Q Okay. I don't want to put words in your
9 mouth. Were you not truthful in your first interview?

10 A No, I wasn't.

11 Q Okay. You -- how did your second one come
12 about, your second interview?

13 A Because I went home and I thought about it and
14 I said, you know, I might as well just go ahead and --

15 Q Okay. So you -- you re-contacted them and
16 said --

17 A Yes.

18 Q -- that you wanted to -- maybe not wanted to,
19 but that you'd talk again?

20 A Yes.

21 Q Okay. Thank you. When you were talking about
22 the biopsy and the snare, that whole thing, the calling out
23 biopsy when the snare is used?

24 A Yes.

25 Q You know what I'm talking about?

1 A Yes.

2 Q Is there other equipment associated with --
3 with the snare?

4 A Yeah, there's -- there's a grounding pad they
5 use [indecipherable] which is a little machine and --
6 grounding pad and a trap to catch the specimen.

7 Q When -- when you -- on the instances when you
8 heard Dr. Desai say snare rather than biopsy, you know what
9 I'm talking about?

10 A Yes.

11 Q Was the other equipment associated with the
12 snare used?

13 A No.

14 Q Okay. Thank you.

15 THE COURT: Pass the witness?

16 MS. WECKERLY: Yes.

17 THE COURT: All right. Cross?

18 MS. STANISH: I'm sorry, Judge, I have to organize a
19 bit.

20 THE COURT: All right. Mr. Santacroce, you can go
21 first.

22 CROSS-EXAMINATION

23 BY MR. SANTACROCE:

24 Q Good afternoon, ma'am.

25 A Good afternoon.

1 Q I represent Ron Lakeman. Do you know Ron?

2 A Yes.

3 Q You worked with him before?

4 A Yes.

5 Q And I believe on September 21, 2007, you are
6 noted as being the GI tech. And I can't see this, but right
7 here, do you see this? Is this you?

8 A Yes.

9 Q And so you were in the procedure room for all
10 of these procedures following Carole Grueskin; is that
11 correct?

12 A I can't say the name. Who is Carole?

13 Q Oh, I'm sorry. It doesn't matter.

14 A Okay.

15 Q She's right here. The procedures you did, you
16 did one, two, three, four, five, six, seven, eight, nine on
17 September 21, 2007; correct?

18 A If you have it.

19 Q Well, do you recall?

20 A No.

21 Q Okay. And in those procedures that I'm
22 alluding to, Mr. Lakeman was the CRNA. Do you have any
23 recollection of that?

24 A No.

25 Q The State asked you about two interviews with

1 the police department. You said the first interview you
2 weren't very truth; is that correct?

3 A Yes.

4 Q And specifically what weren't -- what weren't
5 you truthful about?

6 A The use of bite blocks. And what else? I
7 think it was mostly about reusing stuff at the facility.

8 Q And tell me what specifically you weren't
9 truthful about those things.

10 A Well, they asked if I had seen or heard
11 anything about the reuse of, and I said no.

12 Q And so today you're changing that testimony?

13 A Not today. I changed it a long time ago.

14 Q So on the second interview you gave you
15 changed that testimony --

16 A I did.

17 Q -- correct?

18 A Yes, I did.

19 Q And specifically with the bite blocks you said
20 they were sterilized and reused again; is that correct?

21 A I don't know what exact words that I said they
22 were sterilized, but I said they were reused, so --

23 Q And then at some point I believe you testified
24 that they had been -- they didn't reuse those anymore. They
25 went to single use bite blocks; correct?

1 A Yes.

2 Q I want you to tell me about the procedure in
3 the cleaning room. Can you tell me about that?

4 A That's where you wash the scopes. The scopes
5 come in and you wash them.

6 Q Okay.

7 A You prewash them and they go into the
8 Medivator.

9 Q And did you do that job?

10 A I did that before, yes.

11 Q And tell me specifically your procedure for
12 cleaning those scopes.

13 A Well, they go into a cleaning solution and you
14 brush them and you wipe them down, and then they go into water
15 and they get flushed, and then they go into the Medivator.

16 Q Okay. What type are some of the equipment in
17 the -- in the cleaning room? Is this the cleaning room that
18 you described?

19 A Yes.

20 Q What are these blue buckets?

21 A That's where you wash and you rinse the scope
22 in.

23 Q And why is there two?

24 A One for the cleaning solution and one for the
25 water.

1 Q And how many scopes would you use in those
2 buckets before you changed the water?

3 A The most was probably two or three. Two or
4 three.

5 Q And how many times would you reuse the
6 cleaning solution before you changed that?

7 A That's how many scopes you would probably be
8 doing. You'd change the water when you probably pass about
9 two or three. It depends on how dirty the water comes out.

10 Q Okay.

11 A Like if you have a scope that's really dirty,
12 then you will change the water.

13 Q One time?

14 A If it -- yeah, if you have a lot of fecal
15 material in the scope and it's in the water, then you would
16 change the water.

17 Q And you would change the solution at the same
18 time?

19 A That's the same thing.

20 Q Oh, I'm sorry.

21 A Oh, that's what I mean. I'm sorry. I'm kind
22 of confusing you. The solution.

23 Q Okay. I asked you -- let's go back because
24 I'm confused. There's two buckets. You said one --

25 A Right.

1 Q -- was for the water, one for solution.
2 A Right.
3 Q Okay. So you put the scopes in the water
4 first?
5 A No, in the solution first.
6 Q Solution first, and then you put them in the
7 water to clean the solution off of it; correct?
8 A Right, to rinse it. Right.
9 Q Okay. So I want to know how many times you
10 would use the solution, the cleaning solution, before you
11 would change that.
12 A That's the one where I said by two to three
13 scopes at the most, unless the scopes were really dirty when it
14 came out of the scope room.
15 Q And if it was really dirty you would change it
16 one time?
17 A Yes.
18 Q Now, let's go to the other bucket, the water.
19 Would you reuse the water more than three times on three
20 scopes?
21 A I don't remember the water. I don't remember
22 how often the water bucket got changed.
23 Q So it could have been after three scopes, one
24 scope, ten scopes, you would have no opinion of that?
25 A I don't -- I don't remember that. I don't

1 remember if it even got changed.

2 Q Tell me some of the other things you see in
3 this picture in the cleaning room.

4 A A sink and two machines.

5 Q What are those machines?

6 A The Medivators.

7 Q Did you use those?

8 A I used one of those. When I came one was
9 different. There was a big brown one, and there was one white
10 one.

11 Q Okay. Well, tell me how the Medivator works.

12 A You put the scope in and you attach it to some
13 attachments that was in there that plugged the holes of the
14 scope, then you close it and start it.

15 Q And it runs through a cycle?

16 A Yes.

17 Q And is there solution in that machine?

18 A Yes.

19 Q Did you ever change the solution in that
20 machine?

21 A That machine -- the machine that I remember,
22 it did a count for like 80 and you would have to test it to
23 see if it was failed or pass, so that's when you would change
24 the solution in the machine if it failed on the test strip.

25 Q And how many times did you perform that test

1 on the Medivator?

2 A Well, when I came in in the morning to set up
3 I would test the machines. And if they passed, it would be
4 good. If it failed, I would have to change the solution out.

5 Q So you would do it every morning?

6 A Or in the mornings that I came in to --

7 Q To the cleaning room?

8 A Right.

9 Q And how often would you work in the cleaning
10 room in a week?

11 A I don't know because we all switched. We
12 rotated. So either you're in the procedure room or you were
13 in the cleaning room or out in pre-op. We rotated a lot,
14 so --

15 Q Well, on this particular September 21st date
16 where I just showed you the chart, it looks like you're in a
17 procedure room in the afternoon for -- actually, I don't want
18 to misstate that. You were in the procedure rooms for a
19 period in the morning, and then you weren't, and then you were
20 in a period in the afternoon. So I guess what I'm asking you
21 is would you ever go from the cleaning room to a procedure
22 room during one day?

23 A No.

24 Q So if you were assigned to the cleaning room,
25 you would stay in the cleaning room. If you were assigned to

1 a procedure room for that day, you'd stay in the procedure
2 room; correct?

3 A Yes.

4 Q Can you tell me what this picture depicts?

5 A It looks like scopes are hanging.

6 Q Well, would you take scopes from the cleaning
7 solution and hang them to dry?

8 A No.

9 MS. WECKERLY: It's upside down.

10 MR. SANTACROCE: It wasn't for me.

11 BY MR. SANTACROCE:

12 Q I guess the question is would you take them
13 from the solution to hang up and dry?

14 A No.

15 Q You wouldn't?

16 A No.

17 Q Okay. Well, tell me what this is all about
18 here.

19 A After the scopes would come out of the
20 machine, they are flushed with alcohol, and then they would go
21 in there to hang and dry.

22 Q And who would flush them with alcohol?

23 A The tech that was in the cleaning room.

24 Q So that could be you?

25 A If I was in the cleaning room.

1 Q Okay. And tell me how you would go about
2 flushing them with alcohol.

3 A There's a syringe. There's a syringe and as
4 -- and another container again with some alcohol, and you just
5 flush it through the top channel and it'll float down through
6 the end and come out.

7 Q And would you reuse that alcohol on more than
8 one scope?

9 A No, because you use the whole syringe for the
10 alcohol.

11 Q Okay. So you would draw a syringe full of
12 alcohol --

13 A And press it --

14 Q -- out of a bottle or out of a bucket?

15 A Out of the container.

16 Q Okay.

17 A Yeah.

18 Q And then you would flush that scope?

19 A Yes.

20 Q And then would you take another syringe and go
21 into that alcohol if you were going to do it in another scope?

22 A No.

23 Q Same syringe?

24 A Same syringe.

25 Q And you would go back into that alcohol, fill

1 it --

2 A And flush it.

3 Q -- and flush the scope?

4 A Yes.

5 Q And you would continue that procedure?

6 A Yep.

7 Q And then they would go over here to hang?

8 A Yes.

9 Q Be nice and clean?

10 A Yes.

11 Q And there's Chux underneath here. What was

12 that for?

13 A Those are to catch the drip dry from the

14 scopes.

15 Q Did you ever see a time when these are

16 supposedly clean scopes and this was full of fecal matter?

17 A I have seen that before.

18 Q Okay. Well, why -- well, how do you explain

19 that if they were all clean?

20 A I have no idea. I have no idea how that

21 would be there, but when I would come in in the morning and I

22 would see that, I would try to figure out which scope was

23 leaking to reprocess it. But, yes, I did see that.

24 Q On more than one occasion?

25 A I've seen it a few times.

1 Q What if you didn't catch that? What was the
2 potential?

3 A I don't know.

4 Q Could that scope have been reused or used on a
5 patient?

6 A Possibly.

7 Q I think that's all I have. Thank you.

8 THE COURT: All right. Redirect. Oh, no, I'm
9 sorry. Ms. Stanish, I forgot about you.

10 CROSS-EXAMINATION

11 BY MS. STANISH:

12 Q I just want to clarify what's your name now,
13 your last name?

14 A Holleman.

15 Q Pardon me?

16 A Holleman.

17 Q Holleman. What are you doing now, by the way,
18 for a living?

19 A Gastro tech.

20 Q Okay. You're a gastro tech.

21 A GI tech.

22 Q GI tech. Where do you work?

23 A St. Rose Delima.

24 Q The first time you interviewed with Metro and
25 you were untruthful you were in nursing school; is that

1 correct?

2 A Correct.

3 Q And you didn't complete nursing school?

4 A No.

5 Q But you on your own volition called up the
6 police and said I need to explain things to you again because
7 I wasn't truthful?

8 A Correct.

9 Q And you were worried about having trouble
10 becoming a nurse?

11 A Yes.

12 Q All right. And you were interviewed two
13 times, and both of those interviews were tape recorded;
14 correct?

15 A Yes.

16 Q Did you have any -- and was this handsome guy
17 in the middle there?

18 A Yes.

19 MS. STANISH: And let the record reflect I was
20 pointing to Detective Whitely, not Mr. Staudaher.

21 BY MS. STANISH:

22 Q Did you have any conversations with the
23 detective that -- face to face that were not tape recorded?

24 A I think we talked a little bit before we went
25 back on record.

1 Q So you had an off the record conversation, so
2 to speak, and then went into a tape recorded session?

3 A Yes.

4 Q On direct exam you -- Ms. Weckerly was
5 confused about something you said, and so was I. You were
6 talking about flushing the scope at some point in time. And I
7 didn't -- you weren't talking about the Medivator, were you?

8 A Are you talking about with the alcohol?

9 Q Well, yeah. When you were -- you had
10 mentioned on direct you were talking about flushing the scope.
11 And I just wasn't clear what you were talking about at that
12 point.

13 A I'm kind of confused. Where are you talk --
14 like --

15 Q Okay. If you're confused --

16 A -- at what point are you talking about --

17 Q -- I'm confused.

18 A At what point are you talking about flushing
19 the scope?

20 Q Okay. Let's talk about the cleaning room
21 again, and maybe if I --

22 A Okay.

23 Q -- throw this up here --

24 A So you're talking about the cleaning room.

25 Q Yeah.

1 A Okay.

2 Q This -- these are the Medivators; right?

3 A Yes.

4 Q And you're saying that when you were there,
5 one was different?

6 A Yes.

7 Q And you started when?

8 A In '06.

9 Q And then one of the machine was replaced with
10 a newer machine?

11 A I don't know if it was a newer one, but it was
12 a different machine.

13 Q Which -- do you recognize which machine you
14 worked with?

15 A One of them -- this one -- this one here on
16 the left side, that one was there, but there was a big brown
17 one on this side over here.

18 Q There was a brown one on the right side?

19 A Yes.

20 Q And this one was always there?

21 A Yes.

22 Q And I want to draw your attention to this
23 little doohickey in the corner. It's looks like a green --
24 let me zoom in on it. Separate and apart from the Medivator
25 is another device. Is that called a scope buddy?

1 A Yes.

2 Q Tell us what the scope buddy does.

3 A The scope buddy flushes the solution. When
4 you're in -- when you're cleaning the scope in the wash, in
5 the solution, the scope -- you hook it to the scope buddy. and
6 it flushes the solution through the channels of the scope.
7 That's what that does.

8 Q Let me look at his closer so I can make sure I
9 understand you. You have these at the -- these two bins here
10 are set on the counter; is that correct?

11 A Yes.

12 Q And then this scope buddy looks like it has
13 some plumbing that goes into the wall?

14 A It doesn't go into the sink there. That's
15 just where it's sitting. Those little cables that you see,
16 those little tubings that you see --

17 Q Uh-huh.

18 A --- there's little attachments hooked onto the
19 bottom of those, and those connect to the scope to flush the
20 water or the solution through the scope.

21 Q So what I -- if I'm understanding you
22 correctly, this device kind of --

23 A Is used with the --- yes.

24 Q Oh, it's kind of like a pump where I put ---
25 you have one of these bins on the counter with solution, and

1 then you put one tube in there to suck water and force it --
2 suck water from the bin and then force it through the scope?

3 A Correct.

4 Q Is that what the scope buddy does?

5 A That's what it does.

6 Q And you have -- there's two bins, one is where
7 you do the initial cleaning; correct?

8 A Yes.

9 Q And if it's a scope that needs brush scrubbing
10 -- well, they all need scrubbing; right? You use a -- you run
11 a brush through there?

12 A Yes.

13 Q Do you run the brush before or after you use
14 the scope buddy?

15 A Before.

16 Q Before? And then you have sponges up in the
17 cupboard here that you can scrub the exterior of the scope; is
18 that correct?

19 A Yes.

20 Q All right. And can -- I don't know if you can
21 see it, but there's different things posted on the wall. Do
22 you know what those are?

23 A That's a picture of instructions on how to
24 clean the scope.

25 Q Okay. And do you know what these -- and that

1 looks like a -- just for the record, it's a big poster that
2 has colored pictures; correct?

3 A Yes.

4 Q And those show pictures of -- is it the
5 Medivator that I'm seeing picture in there?

6 A I don't remember exactly what's on those, as
7 for what you're seeing there because that's too small.

8 Q Right.

9 A But it was instructions on how to clean the
10 scope.

11 Q Okay. And were you -- by the way, were you at
12 the facility when the police came and searched it?

13 A I was there when like investigators were --
14 the CDC.

15 Q Okay.

16 A When they were there.

17 Q Okay. You weren't there when the police came?

18 A No.

19 Q Going -- going back to this poster, it
20 generally just was instructions on how to clean the scopes
21 step by step?

22 A Yes.

23 Q And I see too there looks like there's some
24 typed 8 by 11 documents that are taped right to the wall
25 beneath that step by step poster. What are those documents?

1 A I don't know. I don't remember what was on
2 those.

3 Q Would -- would your -- who are your -- was
4 Jeff Krueger one of your supervisors?

5 A Yes, he was over the facility.

6 Q And would they -- would they periodically post
7 messages in the cleaning room to remind you on how to do
8 certain things?

9 A No.

10 Q No? What is this document that's right above
11 the Medivator that's taped to the wall?

12 A I don't know.

13 Q You're not sure? Do you see on top of some
14 plumbing above the Medivator to your left there's what looks
15 like a little card. Can you tell us -- with color on it. Do
16 you know what that is?

17 A No.

18 Q Okay. Did you -- you said that you had some
19 kind of test strips that you -- every time you worked in the
20 cleaning room before your day started, you would test the
21 solution.

22 A Correct.

23 Q Did -- does that card have anything to do with
24 the testing procedures?

25 A No.

1 Q No? Where is the testing materials?
2 A They're not in the picture.
3 Q Oh, they're not in the picture? They're --
4 A No.
5 Q -- somewhere else?
6 A It's just a little bottle, little small bottle
7 with test strips in it, and on the back of the bottle it has
8 different colors, pass or fail indicate whether you -- when
9 you test it, the dipstick, and you put it aside to the bottle
10 to see if it's pass or fail.
11 Q All right. And right here I'm pointing at one
12 of the Medivators. Well, actually, both of them I see like a
13 little hole. Does some kind of printout come from that?
14 A No.
15 Q No? What is that?
16 A That was a timer. That was the time on the
17 machine.
18 Q And generally how long did -- how long were
19 the scopes in the Medivator?
20 A I would say about 30 minutes, 25 to 30
21 minutes.
22 Q And then afterwards you would -- also when you
23 flushed them with alcohol, was that done with a syringe or was
24 it done with something connected to the Medivator?
25 A No, the scope would be out of the Medivator at

1 that point. It would be done with a syringe.

2 Q I'm just going to run you through different --
3 different rooms that you've already discussed. And we've
4 already discussed the cleaning room. Did you do a good job
5 when you were in the cleaning room?

6 A To my knowledge, yes.

7 Q All right. And you said that if you saw
8 something -- if you saw something that was not clean, what
9 would you do?

10 A I would rewash the scope.

11 Q You would rewash scopes. Were you ever
12 involved in hooking the scope up to the machine in the
13 procedure room?

14 A Yes.

15 Q Okay. And when you did that would you get a
16 visual on the screen of what the camera on the scope end was
17 seeing?

18 A Yes.

19 Q And would you double check to make sure that
20 it was a clear picture and there was no dirt or some
21 obstruction on the camera head?

22 A If there was something on the lens, we would
23 alcohol it, alcohol swab to make a --

24 Q On the outside --

25 A -- clear picture.

1 Q -- of the lens?

2 A Yes.

3 Q But if it was something on the inside, would
4 you have to rewash the scope?

5 A I don't -- I don't think anything could get in
6 that. That's a whole different channel from where the suction
7 is from the patient or whatever.

8 Q I see.

9 A So that's not possible.

10 Q All right. Would you witness CRNAs
11 interviewing patients, if you recall?

12 A When they come in the procedure room, they
13 would be talking to them, yes.

14 Q And the CRNA is kind of running through a
15 questionnaire to collect some information about their physical
16 condition?

17 A Yes.

18 Q And when you're in the procedure room as a GI
19 tech, is it part of your job to clean up the room after one
20 patient is gone and before the next one rolls in?

21 A Yes.

22 Q Describe for us what you would do in that
23 respect.

24 A Well, I would take -- I would take the scope,
25 it goes into the cleaning room. If you use the water with the

1 syringe in it, you would take that out and get a new one. The
2 tray is wiped down. There's a little tray next to the cart
3 that the scope goes on. That's wiped down and the cart is
4 wiped down, and then you put a new chuck, and then the -- you
5 get the scope, that's for the next procedure, and you put your
6 gauze and -- what else? And gloves out for the doctor.

7 Q Okay. And would you -- moving now to the
8 recovery room, you -- you would -- would you be the one as the
9 GI tech to hook the patient up to a monitor and blood pressure
10 or --

11 A Yes.

12 Q Okay. Would nurses also do that function?

13 A No, GI techs did that.

14 Q All right. And would you stay with them or
15 would somebody else take over monitoring the patient?

16 A We would hook them up to the monitor and start
17 the measurements for the blood pressure, and then leave.

18 Q And then were there normally two nurses
19 working in that area to assist in recovery?

20 A I don't know how many, but there was a nurse
21 there.

22 Q At least one?

23 A At least one.

24 Q And who would remove the heplock?

25 A The techs.

1 Q And where would that be done?
2 A In the post-op area.
3 Q In the recovery room?
4 A Yeah.
5 Q And then you would -- generally how long would
6 the patient be in the recovery room, if you recall?
7 A 15 to 20 minutes.
8 Q You would have to take certain vital signs;
9 correct?
10 A Yes.
11 Q And they couldn't leave until there were at
12 least three vital signs taken --
13 A Yes.
14 Q -- if not more?
15 A Three to four.
16 Q Three or four? And the vital signs that -- am
17 I correct in understanding that that machine measures vital
18 signs every five minutes?
19 A Yes.
20 Q And then you would, you as a GI tech assigned
21 to the recovery room would escort the patient to the dressing
22 room; correct?
23 A Yes.
24 Q And would you then have to clean the -- the
25 gurney that they were on for the next patient?

1 A Yes.

2 Q And how would you do that?

3 A You would just take the sheet of and put a new
4 one on unless there was something visual there that would get
5 wiped.

6 Q So if there was something visible there, you
7 would do what?

8 A You would wipe it off.

9 Q Okay. Do you use any disinfectant?

10 A Yes.

11 Q And is it the case that you never saw
12 equipment go from one room to the other, the procedure rooms,
13 I mean?

14 A Only if our machine was broken or something
15 and we had to switch it.

16 Q So ---

17 A That's the only thing I -- that's the only
18 equipment I remember being moved around.

19 Q A monitor being moved from one room to the
20 other?

21 A Monitor to watch the patient on, or the
22 monitor for the vitals? Because there's two monitors.

23 Q No, I was just asking you, you know, you
24 recalled -- I asked you what --- if you recalled equipment
25 being moved from room to room --